The American Political Science Review

Vol. XVI AUGUST, 1922 No. 3

CENTRALIZATION VERSUS DECENTRALIZATION

S. GALE LOWRIE

University of Cincinnati

Thirteen years ago, the American Political Science Association directed its attention to the changing relation between our national government and the states. One of the speakers discerned in the tendency toward aggrandizement of national power, manifestations of the principle that sovereignity, unprovided for in extant forms, seeks to embody itself in new forms. The signal incompetence of the states in dealing with economic questions, together with their mendicant attitude towards the national government, was seen as the cause of the transfer to national authority of control over currency supply, transportation rates and methods, and the seeming disposition to transfer control over all corporations.[1] Other speakers called attention to the great increase of national power under the commerce clause and under the Fourteenth Amendment of the Constitution; and one, in a most thoughtful paper, openly challenged the federal system as established in this country, asserting that it showed disadvantages of increasing magnitude in comparison with a unitary system, and was out of harmony with the general environment of modern industrialism.[2]

[1] Henry Jones Ford, "The Influence of State Politics in Expanding Federal Power," in *Proceedings* of the American Political Science Association, V, p. 53.

[2] Stephen Leacock, "The Limitation of Federal Government." *Proceedings* of the American Political Science Association, V, p. 37.

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The few years which have passed since these views were expressed have witnessed a conspicuous change in our institutions, and in no respect has this been so marked as in the increased scope allotted to our national government. It matters not so much under what provisions of the Constitution these extensions have been made; the fact is that there has been a constant, and to the present time, an everincreasing demand that the governmental relations to business and commerce be established on a country-wide scale. This, together with a growing demand for funds from the national treasury, has resulted in a more rapid change in the relation between the states and the central government than has occurred during any other period of our history save that which immediately followed the Civil War.

A catalogue listing only the major avenues through which this movement has progressed would note national expansion in railway control, in the establishment of a national system of highways, in education, in taxation, in banking and in prohibiting the manufacture and sale of liquors, not to mention the enormous extension of national authority and influence under the war powers of the central government. The growth of what might be termed the national police power is seen in acts controlling the hours of labor of children and the use of white phosphorus in the manufacture of matches, the use of safety devices on the railroads and shipment of unwholesome articles of food. The issue now pending before the United States Supreme Court as to the power to fix intra-state rates, is perhaps not less important than any case which has arisen under the commerce clause since John Marshall's momentous decision in Gibbons vs. Ogden.[3]

The increase of national influence through subsidies, particularly in education, presents again an old question. The states themselves pointed the way in this field and showed how a decentralized system of administration might permit the central authority to dominate, by providing funds made available only by compliance with specified standards and conditions. While national encouragement of education was evidenced in the early provisions for the sale and settlement of government lands and the

[3] 9 Wheaton, 1.

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Morrill grants, the element of central control was lacking until the recent grants for vocational training and other educational purposes introduced a practice which seems but on the threshhold of a very great enlargement, and marks a distinct break with those of the past.

That the necessities of modern warfare should demand a highly centralized administration of national scope was to be expected. The railroads and telegraph systems were taken over by the government because of the collapse of the existing system of management. The re-institution of private operation in many financial, industrial and commercial fields inevitably leaves a residue of government control which did not exist before.

The most startling increase in national power we have had since the adoption of the Constitution,—save only the power conferred by the Fourteenth Amendment—comes through the Eighteenth Amendment, which permits the central government to undertake the difficult task of prohibition enforcement. This is probably the most severe test of the efficiency of national administration we have seen in times of peace. Somewhat outside of the field of regulation lie such measures as the currency reform and the banking acts, and the tax statutes, which strongly operate to place under national influence the industrial agencies of the country.

The strength of the movement to lodge greater power with the national government at the expense of the states, is further evidenced by the amendments to the Constitution which have taken place in the period we are considering. Our Constitution had been considered an example of the rigid type, so much so that many, observing the great difficulty of utilizing the amending method, and recalling that the original document with the changes almost immediately incorporated, had been altered only by the rather questionable procedure used in making the Civil War amendments, believed it almost unamendable. Yet, each of the four changes since 1908, except possibly the last, tends to weaken the relative position of the states in our governmental system, and the last two show clearly the disposition to incorporate important changes by national rather than state reform.

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While this centralizing movement seems at full tide, it is pertinent to inquire how far it is likely to extend and whether, if we are but on the eve of a still greater demand for national laws and administration, it would not be the better plan frankly to analyze the need and seek by constitutional amendment to vest definite powers in the central government, rather than continue to employ the cumbersome method of interpreting the commerce clause, the power to levy war or other section to accomplish the same ends.

Governmental power should be as broad as the problems with which it must deal. This principle is applicable whether state action is needed to regulate industry, to apply checks on what might develop as abuses, or to facilitate the legitimate activities of its citizens. The territorial extent of industry is usually determined by the width of the area covered by competing agencies. Industrial concerns desiring the same markets are likely to form agreements and probably combinations, and employees groups are usually established upon a basis equally broad. It is obviously not always practical to maintain governmental institutions over so extensive an area. Other factors need consideration, such as differences in nationality, habits and customs of the people. The division of power between the American states and our national government applied these principles fairly well to conditions as they existed when the Constitution was drafted. The central government was given charge of foreign relations and such domestic matters as under contemporary conditions of commerce and industry needed uniform treatment: coining money, fixing standards of weights and measures, controlling naturalization, establishing post offices and roads, and maintaining the army and navy. While the scope retained by the states was still large, the governmental powers there reposed corresponded in most instances to the areas covered by the industrial activities of the time. As Professor Leacock says: "In the days of Alexander Hamilton this allotment of jurisdiction corresponded with the natural facts of economic life. Today it does not."[4]

[4] Leacock, "The Limitation of Federal Government," in *Proceedings* of the American Political Science Association, V, p. 44.

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The expansion of national power, as these areas have widened, although appearing very great when we compare the federal system of the fathers with that of our day, has been far too slow to relieve our industrial life of a heavy burden. As the points of contact between the government and business have increased in number, and as the territory covered by single industrial and commercial managements has spread over state after state, railway commissions, industrial commissions, public utility commissions, insurance, banking and health commissions, all with broad regulating powers, have sprung up and have applied rulings which have often disregarded the country-wide nature of the enterprises controlled. State laws and constitutions of varying natures, variously interpreted by different judicial tribunals, have added greatly to this complexity, while a state policy of taxation has almost invariably been designed to secure the most revenue without regard to the possible imposition of double burdens in connection with that of other states.

It is interesting to note that while we have observed with general complacency the enhancement of the responsibilities of the central government, there are very definite movements towards devolution in both France and Great Britian. The problem of liberty in France, says Professor Barthelemy, is the problem of decentralization, resuscitation of the communes and the strengthening of local life and patriotism,[5] while Sir Edward Grey said in the House of Commons, that England's choice lay between "devolution or destruction."[6] The difficulties attendant upon extensive centralization are easily observable in Great Britain, France and the United States. Professor Garner criticises the highly centralized French administrative system, declaring it "impossible for the ministers or the directors at Paris to give their personal attention to one-tenth of the mass of petty matters that come up from the communes for their action; it has, in consequence, come to pass that many matters of local concern are determined by chiefs of bureaus and clerks at Paris

[5] J. W. Garner, "Administrative Reform in France," in 13 *American Political Science Review*, p. 32, n.

[6] J. A. Murray Macdonald, 114 *Contemporary Review*, 134, 137.

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rather than by local authorities who are most interested and who are in a better position to determine them quickly, and perhaps more wisely."[7]

Mr. MacDonald observes with respect to Great Britain, that Parliament has long suffered from an all but intolerable congestion of work, and the attempt to relieve Parliament by allowing the executive to assume a larger share, has greatly increased the functions of the latter and curtailed the deliberative functions of Parliament. Consequently, "long before the war broke out, with no special emergency to justify it, hardly a week went by in which one or other of the great Departments of State did not issue edicts of its own, in the form of Orders in Council or Provisional Orders, which changed existing laws, and had all the force and effect of Acts of Parliament without any of the scrutiny and debate to which they ought to have been subjected in Parliament."[8]

A not dissimilar tendency is discerned in our own country by Mr. Hughes, who gives warning of the danger of increased bureaucracy as the legislature more and more escapes responsibility by delegating its powers. This becomes a convenient method of compromise and legislative evasion, and the exercise of power is virtually irresponsible. As new needs have grown up, new agencies have been created responsible only to an appointing power busy with other matters. In consequence we are ruled not by the Executive and Congress but by a host of department chiefs to whose personal desires the rights of American citizens are practically subject.[9]

That the machinery of national government has failed to cope adequately with the increased burden centralization has imposed upon it, probably most observers will agree. Whether the difficulty lies in the amount of new work, or in the unwieldy size of Congress and its lack of organization adequate to function with the executive departments, or in the failure to reorganize the

[7] Garner, *loc. cit.*, p. 19.

[8] *Loc. cit.*, p. 137.

[9] Charles E. Hughes, "Address before New York State Bar Association," January 17, 1919, in 53 *American Law Review*, 661, 670.

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departments and redistribute the work in accordance with modern necessities, is at least open to argument. The fact remains that we have been approaching a danger limit in our tendency to place heavier burdens on Congress and the national executive departments.

The changing relationship between our political units has not been confined to that existing between the national government and the states. Maladjustments have been too evident within the states. While in most instances the difficulties have been political rather than constitutional, nearly every commonwealth with a large urban community within its borders has met an increasing demand for municipal home rule. And although relinquishment of power has been reluctant, the cities have assumed in an ever increasing measure, authority which formerly rested with the states. It might seem, in consequence, that ground between the upper and nether millstones of the national government on the one side and the cities on the other, the states were fast losing their importance. This might be the case were it not for the fact that they too are gaining in power through the centralizing tendencies already noted, especially in the fields of administration. Their gain is chiefly at the expense of the non-urban political subdivisions. In education, public health, utility regulation, banking, insurance control and in the making and enforcement of industrial regulations, the state governments have been playing a rôle of everincreasing importance, and have probably assumed far more power and responsibility than they have lost to the national government.

It has frequently been asserted that, had the states foreseen the growth of the powers of the national government under the Constitution, that document would never have been ratified. But if their vision of the true nature of the government they constituted was limited, so too was their power to foresee the necessities which have successively called for these extensions of power. It is quite evident that we shall see a continuance of the centralizing tendency to effect not only national but international regulation and encouragement of enterprises, the activities of which reach so extensive a field. Commerce and

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industry cannot be restricted by the boundaries of our states or even of our nation. So state control must yield to national control, and the latter in turn, in many instances, to international control. That we are on the eve of an extensive development of international labor regulations is indicated by the institution of the international labor office under the League of Nations, the culmination of years of effort, fostered by the International Association for Labor Legislation, to form an international labor code. So far as our country is concerned, international action further enhances the power of the national government at the expense of the states.

But that the states will cease to form important units in our political system, one would scarcely predict. Events in Great Britain and France indicate how easy it is to go too far in centralizing control of affairs essentially local. It is quite probable that changes in national administration will result in centering in local districts many matters now controlled in Washington, and in the process of devolution the states will play important rôles. Insofar as the movement toward national control represents but a desire to shift to others the cost of governmental services, it is of doubtful value; but as a tendency to establish governmental action on a basis as broad as the field of the activity, it seems in line with sound political principles.

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STATE ADMINISTRATIVE REORGANIZATION

JOHN M. MATHEWS
University of Illinois

Writing in 1919, Mr. W. F. Willoughby declared that "at the present time few reforms of government in the United States are more urgent than that of the reorganization of the administrative services of our state governments, so as to put them upon the integrated or departmental basis."[1] This need for state administrative reorganization is now generally recognized, not only by political scientists and students of administration, but also by public officials and practical administrators. This is indicated by the large number of governors who, in public messages, have urged upon their legislatures the adoption of measures of administrative reform; by the investigations and reports of efficiency and economy commissions or similar bodies created in many states; and by the laws actually passed providing for administrative reorganization in Illinois, Idaho, Nebraska, Ohio, Washington, Massachusetts, and other states.

A movement of this character naturally follows the line of least resistance, and consequently the changes in administrative organization heretofore made have been through statutory enactment rather than through constitutional revision. Inasmuch as, in most states, a faulty organization of the administration is stereotyped in the constitution, thoroughgoing reorganization by mere statutory enactment is practically impossible. The constitutional difficulties which impede the movement for administrative reorganization should warn us against the insertion in the organic law of detailed administrative provisions. The introduction of the short ballot and the equalization of the terms of office of the governor and other state officers are reforms which

[1] The Government of Modern States, p. 393.

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are impeded by constitutional restrictions. The changes in the constitution which are desirable in order to provide for needed flexibility are more in the nature of elimination of existing provisions than of the addition of others. The Massachusetts constitutional amendment of 1918 providing for the establishment by law of not more than twenty administrative departments represents, in principle, the extent to which it seems desirable to go in adopting positive constitutional provisions regarding the administrative organization.

In considering the fundamental improvement in the position of the executive department as a whole, two main questions arise: first, what shall be the relation of the executive to the legislature; and, secondly, what provision shall be made in respect to the internal organization of the executive and administrative authorities? With reference to the first question, two radically different views are held. According to one view, the principle of separation of powers must be altogether adandoned, and it is proposed that this change be brought about by making the legislature the central controlling body in the state government and giving it power to appoint and remove the governor. Those who hold this view favor a close approach to the parliamentary form of government in the states. They also hold that the commission form or, better still, the commission-manager form of city government should serve as models for the reorganization of state government.

With reference to this proposal, it may be noted that in the early governments of the original states, the governor was made subordinate to the legislature, being appointed by that body in several of them; but the tendency since then has been in the direction of increasing the independence of the governor from legislative control, especially with reference to his political powers. Any plan for the reorganization of the state governments, in order to be successful, should be in harmony with the general trend of their organic development.

Although there was formerly some agitation in favor of the application of the commission form of city government to the states, this proposal is not now seriously made. It is very

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doubtful whether it would be expedient to apply to the state governments without modification the main feature of commission government,—the merging of executive and legislative powers in the hands of the same body. Although the principle of separation of powers has undoubtedly been carried much too far in its application to the state governments, it does not seem wise to go to the other extreme of abandoning it almost altogether by entirely merging the political departments of such governments, or bringing them into such close relation as almost entirely to lose their separate identities. Although the governor is an important political officer, he should also be recognized as holding a distinct and independent position as head of the administration in a much more conspicuous way than is provided for under the commission form of city government.

On the other hand, equal recognition should be given to the position of the governor as a political leader in the matter of legislation and the formulation of public policies. In other words, the governor ought to be in politics, in the best sense of that word. For this reason, it is doubtful whether the commission-manager form of city government is suitable for adoption without modification by the states. The city manager is an administrative expert, subject to the control of the commission, and is not supposed to be in politics. The governor cannot be expected to assume a position of outstanding political leadership and to promote his policies even, if necessary, in opposition to a majority of the legislature, if subject to appointment and removal by that body. The manager plan, if adopted by the states, would probably tend to reduce the governor to the position of a mere administrative chief.[2]

Although it seems desirable that the principle of separation of powers should not be altogether adandoned in state government, the executive and legislative departments should be brought into closer contact and coöperation than now exists between them. This is necessary in order that the political leadership

[2] It might be desirable, however, in some states to authorize the governor to appoint a state business manager to attend to matters of general administration, such as the purchase of supplies for the operating departments and institutions.

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of the governor may be effective. To this end a constitutional provision should be adopted giving the governor a seat in the legislature, with the privilege of introducing bills and participating in debate, but without that of voting. The heads of executive departments should also be accorded legislative seats with similar privileges, although they would not be responsible to the legislature, but to the governor. This would enable the executive to assume openly a position of leadership in advocating administration measures on the floor, and would also enable the legislature to criticize more intelligently the results of administrative action.

A rule similar to that adopted by the Illinois house of representatives in 1913 should be established, giving precedence to bills designated by the governor as administration measures. That rule was defective in excepting from such prior consideration appropriation bills. Bills relating to state finance are those which it is especially desirable that the governor should take the initiative in introducing and to which the legislature should be required to give prior consideration. Much the larger share of the expenditures of the state governments is made by the executive and administrative authorities; but, even if this were not true, it seems proper that the governor, in his rôle as political leader, should take the initiative in formulating the budget and in introducing the budget bill. Whoever prepares the budget is likely also to exert an influence upon the plan of state activities or work-program. In planning this work and in drawing up the budget the governor should have the assistance of a staff agency directly under him, which should conduct continuous surveys and investigations of the work of the various agencies engaged in the performance of service functions, in order to collect the information upon which to base a critical examination and revision of the budget estimates.

The legislature should still retain its power of rejecting or modifying the governor's budget. Since the governor retains his item-veto (which should be expanded so as to include the power of reducing items), it seems unnecessary to prohibit the legislature by constitutional provision from increasing the

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governor's estimates, though its power to do so might be restricted by requiring an extraordinary majority for this purpose. In case of decided and continuous difference of opinion between the legislature and the governor over important parts of his budget bill, provision might be made for settling the question by popular referendum.[3]

The matter of a proper budget system for the state is closely associated with that of the reorganization of the state administration into a more coherent and integrated system. The scattered and decentralized condition of the administrative agencies found in most states renders it difficult, if not impossible, to formulate and carry out a scientific budget plan.[4] If the purpose of the executive budget system is to be accomplished, it is necessary first to effect such a reorganization as will make the governor the real, instead of the mere nominal head of the administration.

This brings us to the consideration of the second main phase of the general subject, namely, internal reorganization, or the readjustment of the relations between the different executive and administrative agencies in the interests of great unity, responsibility, concentration of authority and efficiency in action. One of the main obstacles to effective administrative organization in most states, which, on account of its constitutional basis, is difficult to change, is the election of the heads of executive departments by popular vote. Considerations of party cohesion may produce some degree of harmony between these officers and the governor, inasmuch as they are all, as a rule, elected on the same party ticket. But it sometimes happens that they belong to a different party from that of the governor, or a different faction of the same party, and frequently the governor is able to exert little or no real control over them. The practice of electing the heads of departments exerts a subtle influence in dividing the administration, developing friction and causing a lack of harmony and coöperation with the governor and between the various departments. It also causes the injection of political considera-

[3] Cf. the Model State Constitution presented by the Committee on State Government of the National Municipal League, sect. 27.

[4] J. M. Mathews, *Report of the Consolidation Commission of Oregon* (1918), p. 16.

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tions and ambitions into the management of elective offices which are not conducive to efficiency and coöperative action.

It is generally agreed that the short ballot should be adopted as one of the main features of a reorganized state administrative system, not primarily for the purpose of lessening the burden upon the voter, but mainly for the purpose of integrating the administration and concentrating responsibility. There is some question however, as to how short the ballot should be made. Probably the best plan would seem to be to elect only one other officer of the executive department besides the governor, either the lieutenant-governor or the auditor. The office of lieutenant-governor should either be abolished or else reconstructed into a position of greater worth and usefulness. He might be made a sort of deputy governor and relieve the governor of many of the routine duties which now distract his attention from more important matters. In case the office of lieutenant-governor is abolished, then the auditor should be retained on the elective list for two reasons. The first is in order to give him a position somewhat independent of the administration, which might be emphasized by electing him at a different time from that of the gubernatorial election. The second reason is in order to provide an officer of state-wide, instead of local election, to succeed to the governorship in case of vacancy in that office. In case the office of lieutenant-governor is not abolished, the second of these reasons for electing the auditor no longer operates, and it would be better that the latter be appointed by the legislature as its agent in keeping a check on expenditures.

The introduction of the short ballot would, of course, result in increasing the appointive power of the governor. This in itself, however, would not be sufficient to enable him to exercise an effective control over the whole administration in view of the large number and the scattered and disorganized condition of the administrative agencies in many states. It is necessary, in addition, to effect a consolidation and departmentalization of the administrative services. A reduction in the number of separate agencies is necessary for effective central control over them, as well as for their proper interrelation and coöperation. As a

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result of this reduction in number and the increase of central control, the heads of the executive departments could be formed into a body of advisors or governor's cabinet for formulating the policies and planning the general work-program of the administration, upon the analogy of the cabinet officers in the national government. The consolidation of related agencies would tend to simplify the administrative organization and to make it more responsive to the governor and, through him, to the people.

There should be probably not more than a dozen main departments into which all the administrative agencies should be grouped. One reason for this limitation is that a larger body of department heads would not be suitable for consultative purposes in cabinet meetings. A more important reason is that a larger number of separate departments tends to complicate and decentralize the work of administration. The number of separate departments should be as small as feasible consistent with the grouping in each department of related functions. The consolidation of administrative agencies thus involves not only the creation of a few major departments in place of a large number of small ones, but also the grouping of related services within each major department. The exact number of departments and the grouping of functions under departments will naturally vary somewhat from state to state, due to differences in local conditions. Some large departments, however, such as those of finance, education, and public health, would probably be suitable under conditions found in all the states.

After the regrouping of the scattered administrative agencies into a few major departments has been made, it still remains to be determined what form of internal organization is desirable for these departments. Should we have at the head of the department a board, a commission, or a single commissioner? The prevalence of boards and commissions in the past has been one of the main causes of the disintegration of the administration and the diffusion of responsibility. They have amply demonstrated their incapacity for administrative work. The tendency in reorganization plans, whether proposed or in operation, has been very decidedly away from the board or commission and in

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the direction of the single commissioner. It is recognized, however, that for the performance of advisory, quasi-legislative, and quasi-judicial functions several heads are usually better than one, and in these cases, therefore, some concession may be made to the board or commission type of organization. Thus, in Illinois, all of the nine departments created by the Civil Administrative Code are under single commissioners, called directors; but provision is made for certain commissions, such as the tax commission and the industrial commission, which are nominally placed in the appropriate departments. Provision is also made for certain advisory and non-executive boards in some of the departments. The Illinois plan is faulty on account of the loose and ill-defined relation between the commissions and the departments in which they are nominally placed. In departments where there are quasi-legislative or quasi-judicial functions to be performed, associate directors should be provided to act with the head director for the exercise of such functions, but the head director should be solely responsible for the administrative work.

Another question which arises is as to the proper method of selecting the heads of departments and other officers of the administration. The short ballot plan, as already indicated, provides that the governor should appoint the heads of the departments, with the possible exception of the auditor, who, under certain circumstances, may be retained on the elective list. A further question is as to whether the governor's appointments should be subject to confirmation by the senate. Such confirmation is unobjectionable if a tradition exists to the effect that appointments to cabinet positions are to be confirmed as a matter of course. This is the practice in the case of presidential appointments to such positions; but there is no assurance that state senates would everywhere take the same attitude toward the governor's appointments, especially when the governor and senate are out of political harmony. Where a power is unobjectionable only when it is not used, there seems to be no good reason for conferring it.

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Efficiency and economy commissions, in their proposed plans for state administrative reorganization, usually recommend that the power of the senate to confirm appointments be retained. But this recommendation is probably made for reasons of expediency, since the proposed plan must secure the approval of the senate in order to be adopted. Looking at the matter from a more detached point of view, it seems better to dispense altogether with the action of the senate in this matter, so as to place the responsibility for appointments squarely on the shoulders of the governor where it belongs, rather than to divide it between him and the senate. The governor may need advice before making appointments, and it may be suggested that it would be sufficient to require the governor to secure the advice of the senate but not to follow it. But no provision of law is needed for this purpose, and it may be presumed that when the governor needs advice in making appointments, he will consult the persons capable of giving it, whether in or out of the senate. The only legal check that seems needful in the matter is to require that the governor issue a public statement indicating his reasons for making the appointment, which should include a description of the appointee's qualifications for the position. This would tend to prevent wholly unsuitable appointments and would at the same time concentrate responsibility for the appointment.

Some plans of administrative reorganization give the governor the power of appointing also the heads of bureaus and divisions within the major departments. But this is a mistake for three reasons. In the first place, it affords a plausible excuse for requiring that these appointments be confirmed by the senate, while no one would contend that this should be required if the appointments are made by the heads of the executive departments. In the second place, it burdens the governor with the importunities of large numbers of office seekers. The time and attention of the governor should not be distracted with matters of petty patronage, but should be free for the consideration of the larger problems of administration. In the third place, it violates the principle of the due subordination of each officer to

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his superior. The governor ought not to hold the heads of departments responsible for their work unless they are given the power of appointing the heads of the divisions and bureaus within their departments, although they may consult with the governor in making the appointments. The proposal to reduce the number of elective officers does not contemplate that the total number of officers to be appointed by the governor should be increased, but rather that, instead of appointing many officers and boards of relatively minor importance, he should make only a few, but much more important appointments.[5]

Although the general scheme of administrative organization should be provided by legislative act, provision should be made for enabling the governor to meet emergencies by conferring on him the power to redistribute functions among administrative agencies in the interest of economy and efficiency, on the analogy of the power conferred on the President by the Overman Act. In the interests of efficiency and flexibility, the duties and functions of the administrative officers and employees should be determined to a large extent by executive orders and regulations rather than by the detailed provisions of legislative acts. The director of each department should be empowered to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its employees, and the distribution and performance of its business. The subordinate officers and employees, under the heads of bureaus and divisions, should not be subject to appointment for political reasons. They should have relatively secure tenure, and a proper separation of politics from administration should be effected by providing for their appointment and removal only in accordance with the principles of the merit system. This system might in time be extended even to the heads of bureaus and divisions immediately under the cabinet officers, since they are not properly policy-determining officers, but it is their duty to carry out the policies of their superiors.

It does not seem necessary that heads of departments should be appointed for definite terms of office. They should serve at

[5] J. M. Mathews, *Report of the Consolidation Commission of Oregon* (1918), p. 10.

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the pleasure of the governor, subject to removal by him at any time. This is merely carrying out the plan of the national government, and has long been the law in Pennsylvania with reference to the attorney-general and the secretary of the commonwealth. It seems desirable, however, to provide against any arbitrary exercise of the removal power by requiring that, as in the case of appointments, the governor shall issue a public statement of the reasons for removal. Just as the governor is required to state his objections in vetoing a bill, so he should be required to give similar publicity to his reasons for appointments and removals.

Where terms of office of any members of the administration are specified, they should not be longer than that of the governor. The terms of statutory officers have tended to increase, but this tendency has not been so great in the case of the governor because his term is definitely fixed in the constitution. It should in all states be raised to at least four years, in order that he may have adequate opportunity for carrying out a constructive program. Moreover, his inauguration should take place about two months before the first regular legislative session in his term in order to give him a better chance than he now has of maturing his budget plans and other features of his legislative policy before the session begins.

The plan of reorganization herein proposed makes the office of governor the central pivotal point about which the whole administration revolves. It may be objected to by some on the ground that it makes the governor too powerful. This, however, is merely applying to the states the theory of the national government, in which the President is the real head of the administration. There is no great danger in conferring on the governor increased power if it is accompanied with commensurate responsibility. This responsibility will be enforced in part through the simplified machinery and the greater publicity in which the work of the administration will be conducted under the reorganized system. An adequate civil service system on the merit basis, extending preferably even to the heads of bureaus and divisions, will help to prevent a governor, if perchance so

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inclined, from using his power to build up a political machine. A permanency of tenure on the part of the heads of bureaus and divisions immediately under the heads of departments will go far toward maintaining efficiency in administration in spite of the unavoidable frequency of change in the personnel of department heads. A legislative council might be created to sit between regular legislative sessions and to act as a continuous critic of the administration. In order to increase the governor's responsibility directly to the people, provision should be made for his recall by popular vote, subject to reasonable restrictions. This would enable the people to pass upon the governor's general policies prior to the end of his term, as was done in North Dakota in 1921, where the governor was recalled for the first time in any state. If the popular recall is introduced, it would then be feasible to have the governor elected for even longer than a four year term, subject to recall at stated intervals during his term. This would tend to attract abler men to the office and give them larger powers and opportunities of leadership, subject to adequate accountability to the people for the use and abuse of their powers and opportunities.

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DOGMAS OF ADMINISTRATIVE REFORM

AS EXEMPLIFIED IN THE RECENT REORGANIZATION IN OHIO

F. W. COKER

Ohio State University

An extensive reorganization of administrative offices in Ohio was accomplished by a law enacted in April, 1921, and in effect July 1st, 1921.[1] That reorganization is taken as the central point of this discussion, not because persons outside of Ohio are interested in details of Ohio government, but because the Ohio reorganization is one of the latest of such schemes to be put into effect and because it has been considered to exemplify relatively well the principles which our leading administrative reformers wish to see applied in our state executive departments. There is nothing of more practical importance in this connection than to examine carefully the principles upon which these reorganizations are supposed to be based. The editor of the *National Municipal Review* pronounces the Ohio reorganization to be "a big advance in popular government;" and Dr. W. F. Dodd, one of our leading experts in state government, says that the Ohio reorganization "is perhaps the most effective yet planned in this country, except for the fact of the constitutional limitation of the governor's term" to two years. This paper will sketch, as briefly as possible, and at certain points roughly judge, the changes made by the Ohio reorganization act of

[1] The act is entitled "An act to establish an administrative code for the State, to create new administrative departments and redistribute among them existing administrative functions. . . . ." (109 Laws of Ohio, 105–135). There is not space here to review the extensive surveys and recommendations made by experts preliminary to the reorganization, or to discuss the action of the legislature in declaring the reorganization act to be "an emergency law necessary for the immediate preservation of the public peace, health and safety" (by this action protecting the act from the test of a popular referendum) or the decision of the Ohio supreme court sustaining the action of the legislature.

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1921, and then try briefly to indicate my general attitude towards the objects and policies of such a reorganization.

Before the reorganization we had fifty-one distinct, mutually independent, administrative agencies—including the various offices, boards, and commissions comprising the executive department of the state. For convenience we may use the term "department" uniformly as the designation for any of these agencies. Six of the departments were headed by elective officers, constitutionally established; the reorganization, being carried out by statutory legislation, could for the most part be applied only to the forty-five appointive departments. These appointive departments were variously organized as to their headship, the familiar forms being used: for some of them the head was a single official appointed by the governor or governor and senate, and holding office for at most a term no longer than that of the governor; for others the form of headship was that of a small commission of salaried members devoting all of their time to their positions and exercising jointly direct and actual control of the work of the department; for others the type was that of a large board of unsalaried members exercising powers of general regulation and supervision, actual administrative direction being in the hands of a single official appointed by the board; a fourth type was that of a board composed in the manner just described, but possessing powers chiefly of investigation and publicity and exercising little or no actual administrative authority directly or indirectly.

What has the reorganization act done in the way of regrouping, and transforming the controlling office in these forty-five departments? Some of them are left unaffected by the act; a number of them are consolidated into eight main departments created by the act, each of these new departments being headed by a single official—a director, appointed by the governor and senate and (with the exception of the director of education) serving at the pleasure of the governor;[2] finally, some of them,

[2] These eight new departments are as follows: finance, commerce, highways and public works, agriculture, industrial relations, education, public welfare, health. The act provides that the superintendent of public instruction shall be director of education; the former is a constitutional officer appointed by the governor for a four year term.

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though left independent in tenure, are made partially subordinate in functioning to certain of the main, new departments. The net result, so far as number of departments is concerned, is about as follows: in place of the former forty-five separate appointive departments, we now have twenty-two independent and thirteen partially independent departments,[3] the twenty-two independent departments including the eight new departments plus the fourteen old departments left undisturbed by the act.[4] The more important changes in form of organization and distribution of functions are indicated below.

With respect to the changes involved in the creation of the eight main departments, the resulting consolidations seem clearly useful in the case of four of these departments—the departments of commerce, finance, agriculture, and highways and public works; in each of these instances the reorganization results in bringing together into a single office a number of agencies performing closely similar administrative functions; this ought to result in some beneficial correlation of work and in some appre-

[3] The thirteen departments made partly dependent, and left partly independent, by the reorganization, are the following: six examining and licensing boards (medical, dental, pharmacy, optometry, embalming, accounting), left independent in tenure but "attached to the department of education;" three administrative commissions exercising supplementary legislative and quasi-judicial functions (the industrial, public utility, and tax commissions, attached, respectively, to the departments of industrial relations, commerce, and finance); the commission for the blind, independently appointed but attached to the department of public welfare; the state library board, placed "in the department of education," but with a majority of its members independent of the director of education; the commissioner of soldiers' claims, placed "under the supervision of the adjutant general," but not appointed or removable by him; the public health council.

[4] The fourteen departments left wholly or almost wholly unaffected by the reorganization are the following: the civil service commission; the adjutant general; the boards of trustees of the six universities and normal schools, of the archaeological and historical museum, and of the soldiers' and sailors' orphans' home; the board of directors of the Longview hospital; the veterinary examiners; the commissioner of prohibition (created by act of February 9, 1921); the superintendent of banks. The last-mentioned office is said by the act to be "in the department of commerce," but the immediately subsequent provisions of the act (added by amendment in the course of the passage of the bill through the legislature) give the office a position of apparently complete independence, in tenure and function, of the department of commerce.

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ciable saving both in overhead, and in inspectional, clerical and other subordinate, service. It may be a debatable question whether the single director, changeable with each change of governor, is the proper form of headship for the department of public works, in view of the need for preserving continuity of policy in highway administration and for maintaining constant relations of coöperation and mutual confidence between administrative head and engineering staff; it seems possible that it would have been better to have provided for control of this department by a commission of members holding overlapping terms and acting through an administrative director appointed by them. Under the department of commerce five formerly independent agencies dealing with the purely administrative regulation of certain private business activities are combined.[5]

The department of finance brings together a group of clearly interrelated functions—by giving to the director of finance the duties formerly performed by the governor's budget commissioner, by transferring to this department the state purchasing bureau (formerly under the secretary of state) and the function of public printing formerly in the hands of a separate appointive office.[6] With respect to agricultural administration, where prior to the act a high degree of consolidation existed, the act carries this a step further by placing the agricultural and experimental station under the joint control of the director of agriculture and the board of trustees of the state university.[7] The creation of the department of highways and public works merges into one department several formerly distinct offices

[5] The five offices brought together in the department of commerce are the following: superintendent of insurance, inspector of building and loan associations, commissioner of securities, inspector of oils, state fire marshal.

[6] In addition the act gives the director of finance new functions in connection with checking up on the incurring of liabilities by administrative officials, and prescribing forms for accounts, orders, invoices, and financial reports. These functions constitute a probably useful addition to the state auditor's work of auditing incurred liabilities.

[7] Prior to the act the agricultural activities of the state (except those of the experiment station and of the college of agriculture of the state university) were administered under the control of an unpaid board of agriculture acting through a secretary appointed by the board.

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and functions relating to state highways, state-owned buildings, canals and lands, and the leasing of quarters for state offices.[8]

The changes effected in the establishment of the four other main departments—those of education, industrial relations, health, and public welfare—deserve somewhat fuller consideration. The act attempts to create a department of education by designating the superintendent of public instruction (a constitutional, appointive officer) as director of such a department and by attempting to bring various educational agencies of the state into more or less close association with the department. First, the director of education is made, *ex officio*, a non-voting member of the board of trustees of each of the six state colleges and normal schools. As each of these institutions has as at least part of its work the training of teachers for the public schools, there are possible advantages in this slight change. Secondly, the director is made *ex officio* a voting member of the board of trustees of the state archaeological and historical society. Thirdly, the director is made a member of the state library board, the other members being appointed by the governor. Since the eight boards just indicated are left entirely independent of the power of the director of education (except for his single vote in each of the two last-mentioned boards), no very strong consolidation is effected by the foregoing changes. Fourthly, the act places in the department of education the formerly independent office of state geologist. This transfer by statute is likely to make little if any change in the actual administration of the work indicated. The director of education has no fitness for or interest in the work of the geological survey. The present director realizes this; and the work is of such character as not to tempt interference by any future director. This change is probably harmless and useless—a mere paper consolidation. Fifth, the act transfers to this de-

[8] The offices of state highway commissioner, superintendent of public works, and state building commission (an *ex officio* body) are abolished by the act and their duties conferred upon the director of highways and public works. The act also transfers to this director the duties formerly fulfilled by the adjutant general in his capacity of superintendent of public buildings. Another act passed in the same session abolishes the state highway advisory board.

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partment the work of examination and censorship of motion picture films (work formerly performed by a board appointed by the governor but acting under the industrial commission); the act creates an unpaid advisory board of film censorship appointed by the governor, the director being given powers of decision in this field. Finally, the act "attaches" to the department of education six of the state's seven examining and licensing boards; the director is required to recommend to the boards standards as to preliminary education, methods of determining the standing of professional schools, methods of examination, and methods of enforcing laws which the boards are required to administer; and the boards are severally authorized to delegate to the department any of their powers or duties with respect to matters concerning which the department is directed to make recommendations. In general, it can hardly be said that a department of education is created by the act. The director's powers in relation to the public schools are left as before, and the other educational activities of the state are for the most part left as independent as they were prior to the act.

With regard to labor administration we had complete consolidation prior to the act, the various agencies dealing with the administration of labor laws having by an act of 1913 been brought together under the industrial commission created by the latter act. The reorganization of 1921 disrupts this unity. It creates a department of industrial relations, headed by a director, to which department are transferred the administrative functions of the industrial commission, the commission remaining an independent body and retaining its supplementary legislative and quasi-judicial powers. Further comment on this sort of change will appear below.

In health administration again there was little opportunity for further consolidation, practically all health activities of the state being already administered under one department; the act, however, makes one useful change by transferring the bureau of vital statistics, formerly under the secretary of state, to the department of health. Prior to the reorganization this department was under the control of a council of health composed of the

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health commissioner and four other members appointed by the governor, with over lapping terms; this council exercising only powers of final control and general regulation, administrative and executive functions being performed by the health commissioner appointed by the council for a five-year term. The act takes away from this council the power to select the executive officer of the health department, but retains the council as a separate agency with powers to issue general regulations affecting health matters; the enforcement of these regulations is placed in the hands of the director of health who is made independent of the council. This change in the controlling office of health administration seems of doubtful wisdom. It establishes a division of authority where there seems to be no need for such division. Moreover, the primary needs in this work seem to be continuity of policy and a relation of mutual coöperation and confidence between directing head and technical staff. Is it practicable under any other arrangement for the director to reach satisfactory conclusions as to whether, for example, he should order a municipality to change its system of water supply or sewage disposal? Can such decisions be intelligently reached except after a somewhat extended investigation by sanitary engineers who sustain a relation to the administrative head like that of team to captain or of professors and instructors to head of department in a college? And are not such conditions and relations more likely to be obtained under the former organization of our health department than under the new organization?

In the administration of state charities and corrections also we had a high degree of consolidation prior to the reorganization. The administration of nineteen of the state's twenty-one charitable and correctional institutions had by an act of 1911 been consolidated under the control of a board of administration of four members (not over two of them to be of the same political party), appointed by the governor with overlapping terms; the bureau of juvenile research had later been placed under this board. The act substitutes a director of public welfare for this board; and introduces further concentration by

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abolishing two independent boards—the board of clemency and the board of state charities—and placing their duties under the director of public welfare. Further comment seems to be in place with regard both to the change in the form of headship of this department and to the discarding of the independent charities board. I do not believe that prior to the reorganization we had the proper sort of body to direct the administration of the state's charitable and penal institutions; the equal division between parties is rarely satisfactory, and the work of this department is of the character which can probably be more satisfactorily executed though a single official. I believe the proper form to have substituted for the administering board is the larger unpaid board controlling through a single executive official. The board of state charities, abolished by the act, was an unsalaried board of nine members appointed and serving in the usual form. It possessed important powers in the way of investigating and drawing public attention to any feature of the management or condition of any public or private benevolent or correctional institution in the state; it could also withhold approval of plans of buildings or changes in the buildings of the public institutions; and it had the further function of inspecting and certifying all agencies caring for defective children. The composition and functions of this board were such as normally to attract to its membership public-spirited persons who had no particular office-holding ambition or political interest in the narrower sense of the word, and yet who were willing to give some time and serious attention to observing and criticising charitable and correctional work done under the state's auspices. It was, I believe, performing a highly useful work of independent investigation, advice, and publicity. For this important work we are now dependent upon such agencies as the director of public welfare may create.

Besides creating the eight main consolidated departments, the act attempts still further concentration by placing certain commissions, whose independent tenure is left undisturbed by the act, into association with and partial dependence upon certain of the main departments. For example, the act leaves

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in existence the old industrial commission, makes no change in its tenure or term, and leaves it with its quasi-judicial and supplementary legislative powers, such as those of deciding upon awards under the Workmen's Compensation Act and making regulations as to safety and sanitation in industrial establishments; on the other hand, the commission is placed for administrative purposes under the director of industrial relations. In a similar way the tax commission is put administratively under the department of finance, the public utility commission under the department of commerce, and the commission for the blind under the department of public welfare. Some uncertainty has developed as to the full meaning and intent of the provisions establishing the connections just indicated. But they at least mean that the appointment and direction of the subordinate officials who perform the investigative and administrative work for the commissions in question are taken away from those commissions (where in Ohio we have suffered less from political influence than in most other offices) and placed in the hands of officers under the complete political control of the governor. It means, for example, that the industrial commission, which is left with its important duties of fixing premium rates for the state industrial insurance and of investigating and determining standards of health and safety in industrial establishments, must determine these rates and standards upon the basis of investigating, inspecting and compiling work done by a staff over which the commission has no control. Yet the industrial commission, not the director of industrial relations, must bear responsibility for the character of these determinations and standards. Similarly with the public utility commission, for all the difficult questions as to change of rates, issue of securities extension or curtailment of services, the power of decision and the responsibility for the decisions and judgments remain with the independent public utility commission as before; but the large staff of engineers and accountants, upon whose work such decisions must be based, is withdrawn from the control of the commission and made subordinate to the director of commerce.

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The principles upon which this and other recent reorganizations are based are clear and familiar. There is, first, the principle of economy: save money and effort by eliminating duplication and overlapping of activity; save both in overhead expense and in clerical, inspectional, and other subordinate work, by bringing together into one large department agencies performing closely similar and closely interrelated functions. No serious exception can be taken to this principle. The only suggestion to be ventured here is this: it is possible that improvement in our state administration, by way of eliminating needless duplication and overlapping, can be achieved better by a piecemeal process—dealing particularly with each case of duplication—than by the more sweeping method of reconstruction followed by the recent reorganization acts.

Secondly, there is the more fundamental principle of concentration of power and authority: concentrate power in order to attract abler men to executive and administrative offices, in order to give freer rein to able men in office, and in order to secure an easier location of responsibility. The reorganization acts attempt to obtain this concentration in two ways. First, place each main administrative department under a single director, so that there shall be no division of power and responsibility in the control of any such department. Second, give the governor complete control over each director by providing that each director shall serve at the pleasure of the governor, in order that public responsibility for the entire directing personnel of the administration may be inescapably fixed upon one conspicuous official, and also in order to make possible a unified executive policy or program and to facilitate coöperation among the different departments.

However appealing this theory of a unified, responsible executive may be, however valid the theory may be in certain of its applications, it may be subject to more substantial and radical qualifications than our leaders in administrative reconstruction are allowing. The points of challenge can be stated in only a brief, summary way, with the hope that they will receive more authoritative consideration than can be given them here.

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First, in the matter of the single headed administrative department, is it true that for all such departments unity of power and responsibility is of more importance than continuity of policy and the maintenance of relations of mutual respect and confidence between head and staff? In the recent Ohio reorganization, have we not in too many instances sacrificed good of the latter sort in the effort to gain advantages of the former sort?

Secondly, are we not in danger of carrying too far the idea that popular control is advanced chiefly by placing vast powers in one elected officer, with the expectation that this officer will feel responsibility so certainly fixed upon him that he will be more sensitive to public opinion than he would be if he possessed a narrower allotment of power? Are we not overlooking other equally potent incentives to good service—other incentives which may be weakened by this centralization of power? Are we not greatly exaggerating the ability of public opinion—even an intelligent and alert public opinion—to keep constant observance upon its representatives and to pass satisfactory judgment upon them periodically? In the last question there is reference to what may be a fundamental error of the advocates of the principles which we are examining—namely the assumption that popular control over executive officers is applied chiefly through the election and rejection of these officers at the polls. Popular control of the administration of law is not exercised principally through the popular selection and dismissal of executive officers, one or many. It is equally exercised in enacting directly or indirectly a law determining a method of administration. It is an exercise of popular control to determine that we, the people, want our health or charitable services expertly rather than politically administered, and to determine that such administration in accordance with our desires is more likely to be obtained under a director selected by a continuing council than under a director subject to change every two or four years. Our state university and our local schools are administered as nearly in accordance with public opinion as is or will be our department of commerce. Is there any more reason for making a

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director of health or of public welfare, or of education, subject to change with every change of governor, in the interest of popular government, than to make the president of the state university changeable with each change of governor, or the local superintendent of public schools changeable at each mayoralty election? We, the voters, don't want to be consulted on such questions every two or four years. We believe that in the long run the schools will be administered more nearly in accordance with our needs and desires by not calling upon us to pass periodic judgment upon the matter. It may be doubted if either popular government or efficient government is likely to be advanced by placing the health or public welfare director completely under the control of the governor, or by subjecting the public utilities commission and the industrial commission to interference by directors under the control of the governor, or by transferring the peculiar services rendered by the old board of state charities to a director so controlled.

I am a strong believer in the short ballot principle insofar as it means the short ballot—that is the election of relatively few executive officials, popular election not being, in my opinion, a satisfactory method for choosing more than a very limited number of executive officials. I am ready to part company with the short ballot advocates if they contend that, in order to be consistent, we must place the entire control of our administration in the hands of one or a few officials changeable every two or four years. With the exception of the national government of the United States, a few cities of the United States (Pittsburgh, Boston, Cleveland, for example), and some Latin-American governments, no important government—national, district, or local—anywhere in the world is organized on the principles, or on the basis of anything approaching the principles, of narrowly concentrated authority and responsibility—principles upon which many of our reformers of state and city government are defending their plans for consolidated executives.

These recent systems of reorganization give too little weight to such needs as the following: (1) The need of securing continuity of policy in administrative departments having work of a techni-

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cal and regulation-establishing character; (2) the need for facilitating the establishment of customs and traditions of non-interference by periodically changing political officers; (3) the need for eliciting the participation of disinterested citizens serving on unpaid boards, exercising powers of investigation, advice and publicity; (4) the need for placing legal authority and responsibility in the particular offices most likely to develop a sense of professional responsibility and pride in connection with the work of such offices; (5) the uselessness of extending the scope of power of any officer beyond the limits of what that officer can actually devote his attention to. Both reason and experience show that, for the administration of many functions, diffusion, rather than concentration, of authority, secures not only more efficient but also more democratic administration.

In this examination of the recent administrative reorganization in Ohio chief attention has been deliberately given to the features which seem of doubtful benefit, on the assumption that it is such features which need discussion rather than the features with respect to which there is less difference of opinion. If the reorganization of 1921 produces substantial changes in practice these changes are in some important instances as likely to retard as to promote the progress of popular and efficient government. If we reconstruct Ohio administrative offices again we shall need to bring in experts as able and as disinterested as those who served us in 1921. And in any subsequent reorganization there is no reason why it should be peculiarly difficult to discriminate among those departments which should be administered by single officials under the political control of the governor, those which require commissions of several members holding overlapping terms, and those which are best administered by single officers appointed by large, unpaid boards, and enjoying reasonable security of tenure; nor should any troublesome confusion result from retaining in some places separate boards having powers of independent investigation and criticism. There is a vast amount of useful coördination that can be accomplished in our state administrative systems without making too much of a fetish out of the principle of one-man responsibility and control.

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THE TREND OF THE DIRECT PRIMARY[1]

RALPH S. BOOTS

University of Nebraska

During the past few years there have been numerous proposals to repeal and to modify the direct primary laws, and many changes have been made. In the opinion of those who consider the direct primary one of the leading political reforms of the present century, this activity is due to the machinations of the routed politicians conspiring to restore their power; in the opinion of others, less confident of the merits of the direct primary, it is the natural outcome of the defects which have appeared in the operation of this system. An examination of the more important changes proposed and of those made since 1918, may serve to throw some light on the situation at the present time.

Lack of space prevents the presentation in detail of the proposals for modifications of the direct primary laws which have appeared in the legislatures within the last three years. Of course the mere fact that a certain change was presented in the form of a bill furnished no indication of public opinion, nor of legislative opinion, nor of the strength of the advocates of the change. It is true, however, that several of the measures enacted were passed after one or more defeats.

Bills to repeal the direct primary law were before the legislatures of Maine, Vermont, New York, and North Carolina in 1919, Maryland in 1920, Vermont, West Virginia, and North Carolina in 1921, and New York in 1922. The 1921 proposal (not applicable to town officers) passed the senate in Vermont. The first proposal in North Carolina would have submitted the question of abolition to the voters, while the last proposal in both New York and North Carolina died in committee. The legisla-

[1] See "Recent Primary and Election Laws," by P. Orman Ray, 13 *American Political Science Review,* 264 (May, 1919).

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tive reference library in the latter state reports that "the primary law has come to stay."

Bills designed to restore the convention specifically for minor state officers were introduced in Iowa, in 1919 and 1921, and in Massachusetts in 1922. A joint resolution for a constitutional amendment to accomplish practically the same purpose was introduced in Ohio in 1919. Bills to restore the convention for certain offices appeared as follows: West Virginia, for all areas larger than a county, 1919, 1921; Indiana, for all except local offices, 1919; Iowa, for all except local offices, 1919, 1921, and for judges, United States senator, and presidential electors, 1921; Montana, for all areas greater than a county, including delegates to national conventions, 1921; Wyoming, for practically all offices, 1921; Washington, for all except local offices, conventions to be limited to persons who should file certificates of candidacy, 1919; Texas, for judges, 1921; Missouri, for practically all offices, with the convention action to be approved at a primary, perhaps, 1921; for state offices, United States senator, and judges of the court of appeals, 1921; for judges, 1921; West Virginia, for judges, 1921, each party to hold a "meeting." Bills to eliminate the party designation, thus establishing usually nonpartisan nominations and elections, appeared in Massachusetts in 1919 and 1922, applicable to all state and county offices; in Wisconsin, 1921, applicable to county offices; in North Dakota, 1919, applicable generally (passed in part in 1921); in Wyoming, 1921, applicable to judges and county superintendents of schools, apparently dispensing with a primary altogether.

In the following states bills providing some kind of pre-primary endorsing convention appeared: Massachusetts (several), Minnesota, New York (twice), Iowa, Wisconsin (twice), Nebraska (twice) and, Wyoming. A proposal to restore the presidential preference primary was made in Iowa; in Indiana a proposal to extend the primary to include candidates for governor and United States senator was introduced, containing a plan for permitting any party voter to attend and participate in a state convention, while assuring equitable representation of the counties. In Oregon, it was proposed to have printed after the name of

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every candidate for delegate to a national convention the clause: "I will support the candidate for president receiving the highest number of votes in the state," and permitting a candidate to insert "not."

In the following summary of changes enacted, the states are arranged according to geographical location in order to facilitate a comparison of the tendencies of states within different sections of the country.

Vermont[2] has repealed the presidential primary and now permits the election of delegates to national conventions by state conventions called under the rules of the state committees. The law makes a change from the "open" to the "closed" primary. Separate primary ballots are now provided for the different parties[3] instead of separate party columns on a single ballot, the voter to receive the party ballot he wishes to vote.

Massachusetts has provided for additional women members on state political party committees.[4] The amount which a candidate for governor or for United States senator may spend for his nomination or election [both?] was increased from $2500 to $5000, and the amount permissible to candidates for other state offices or for United States representation, from $1500 to $3000.[5]

In New York,[6] conventions have been restored for the nomination of candidates, other than presidential electors (nominated by the state committees), to be voted for by all the voters of the state, and for justices of the supreme court (elected in nine districts, not the highest court of the state). Delegates-at-large to national conventions are hereafter to be elected at state conventions; national district delegates and delegates to the state and judicial district conventions are to be elected at official primaries. The assembly district is made the unit of representation for the state conventions, and the number of delegates is to be determined by party rules if based substantially on the

[2] 1921, No. 7.
[3] 1921, No. 9.
[4] 1921, ch. 388.
[5] 1920, ch. 149.
[6] 1921, ch. 479.

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relative party strength of the districts. Certain regulations are provided for the state conventions. Upon the call of the official roll, delegates must rise and declare their choices for temporary chairman. The vote on the nomination of candidates is to be given viva voce unless the chairmen announce the vote of their respective delegations without objection. Summary court proceedings may be instituted upon the petition of any person claiming to have been deprived of a right of participation in a primary election, convention, or committee, or upon the petition of the chairman of a political committee, to be heard upon such notice as the court may direct. A general revision of the New York election laws was enacted in 1922.

In 1920, the New Jersey legislature passed a general revision of the election law, running through 242 pages.[7] Considerable improvement was made in arrangement and clarity, but the length remains objectionable. Few material changes appear to have been made. The regulation of political expenditures is very elaborate. It is made the duty of the treasurer of every party committee within ten days after the annual organization of the committee, to file a statement of the money received by or on behalf of the committee, containing the names of all persons from whom it was received and recording the purpose of all expenditures over five dollars. A scheme for requiring campaign managers to deposit all their funds with and expend them through a national bank, a state bank, or a trust company, is devised. No manager may authorize any expenditure unless the amount is on deposit. There is to be no expenditure by anyone unless on a written order made on a fixed form by a campaign manager. The payee must make affidavit that the amount justly due is stated, that all purposes are truly stated, and that no person but himself is interested directly or indirectly in the payment. The treasurer or cashier of the bank or trust company must file all deposit slips and vouchers in the proper public office. Any candidate for nomination may hire only one watcher, and each political party may hire two challengers only, for each polling

[7] 1920, ch. 349.

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place. No printing or distribution of posters or cards on bill boards, dead walls, trees, posts, or the windows of buildings is allowed. In 1921, the preceding act was revised to the extent of one hundred pages.[8] The expenditures permitted have been doubled. Those who would be delegates to national conventions may now spend $10,000 for the purpose. As New Jersey sends twenty-eight delegates to a national convention, if two candidates should seek each place, $560,000 could legally be expended within each party. One is led to inquire here whether the law is designed to promote and encourage reckless and needless political expenditures; whether the previous limits were so low as to injure the public interest; or whether the framers of the new law, believing the requirements might prove effective, desired to legalize and thus permit without embarassment, the expenditure of an amount which they consider necessary?

The Pennsylvania legislature[9] has restored to nomination on party tickets at party primaries the candidates for mayor, member of the council (five), controller, treasurer, and all other elective officers of third class cities (between 10,000 and 100,000 population); and proceeded two years later[10] to take similar action regarding all candidates for elective offices in cities of the second class, and also candidates for the supreme and superior courts and all courts of record except those elected at the municipal election in odd years. The order of the names of candidates on the primary ballot is hereafter to be determined by lot instead of following the alphabetical order of the first letters of those names.[11]

In Kentucky, an act of 1920[12] provided that the governing authority of any party which at the last presidential election cast 20 per cent of the total state vote, might prescribe the manner in which the candidates for state-wide offices should be nomi-

[8] 1921, ch. 196.

[9] 1919, No. 360.

[10] 1921, Nos. 189 and 198.

[11] See "Voters' Vagaries," by R. C. Brooks, in 10 *National Municipal Review*, 161 (March, 1921).

[12] 1920, ch. 72.

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nated, with the limitation that, if this authority should decide to nominate by a primary, then the general state primary election law should apply. The primary act was declared no longer applicable to judges of the court of appeals or of the circuit court,[13] and to relieve persons from seeking such nominations and from declaring party loyalty, such nominations were allowed to be made by resolution of the appropriate party committees or by the application of two reputable electors of any political party, with a decision at the primary. Any candidate defeated at a primary election was made ineligible for the same office during the same year.[14]

Missouri has repealed an awkward arrangement[15] for so-called nonpartisan, but really bipartisan, nomination of judges for circuit courts in cities and counties having 350,000 population. Alabama has reduced by about one-half[16] the amount of the assessment which party committees had been authorized to make upon primary candidates and provided for recording the number of each voter's ballot for use in contested elections, but apparently without adequate effort to preserve secrecy.

In Indiana,[17] it has been provided that the name of no independent candidate should be printed on the general election ballot unless he should have filed his declaration thirty days before the primary. A general revision of the Illinois primary laws, which made no important changes, was held unconstitutional; minor changes in 1921 provided for the nomination of circuit judges by conventions and changed the date for the general primary to April.[18]

Wisconsin has adopted nonpartisan nominations for candidates for county offices in counties of 250,000 population, and repealed an excessively elaborate provision for a so-called coupon ballot, though not the ballot ordinarily designated by that term.[19]

[13] 1920, ch. 99.
[14] 1920, ch. 156.
[15] 1919, S. B. 193.
[16] 1919, No. 669.
[17] 1921, ch. 198.
[18] 1919, p. 475, S. B. 454; 1921, pp. 431–433.
[19] 1919, chs. 60 and 566.

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North Dakota requires the nonpartisan nomination and election of all county officers, judges of the supreme and district courts, and state and county superintendents of public instruction.[20]

Minnesota has made official the pre-primary convention, a not unusual unofficial institution in other states.[21] On the second Tuesday in March in every even year, delegates are elected from each election district to county conventions. Persons wishing to be delegates file applications for places on the primary ballot with the county auditor. The regular election officials preside at this pre-primary election. Party enrollment is required for participation in the selection of these delegates and no voter so participating can change his party for the June primary. County conventions elect delegates to the congressional district and state conventions, the latter to meet during the last seven days of March and in presidential years to select national delegates. The latter two conventions may endorse candidates for nomination to the various offices within their respective areas and this endorsement is stated on the primary ballot. No aspirants for nomination are permitted to file their petitions until after the endorsing conventions have been held. The county committees are to be elected by the county conventions and the state committees by the state conventions, each endorsed candidate being authorized to select one additional member for the latter. The state committees were formerly selected by party councils consisting of the party nominees and holdover officers.

In South Dakota, several of the more unique features of the Richards' primary law of 1918 have been repealed: the method of determining the leading principles of the party platform by primary vote;[22] the definition of the "paramount issue," and the gubernatorial and presidential joint debate requirement;[23] the primary vote endorsement of a national paramount issue, constituting an instruction to the national delegates to vote for this issue three times in the national convention, and primary endorse-

[20] 1919, ch. 117.
[21] 1921, ch. 322.
[22] 1921, ch. 331.
[23] 1921, ch. 329.

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ment for appointive offices;[24] the arrangement for endorsing candidates for postmasterships[25] and the state publicity pamphlet.[26] A bill passed the legislature[27] providing for the nomination of all state officers except governor, and the election of national committeemen and delegates, by state conventions, but was defeated on a referendum vote, 65,000–82,000. A very stringent limitation[28] on customary campaigning methods made it unlawful for any candidate, political committee, or other person, to offer anything of value to any person to work at the polls in the interest of any party or candidate, to influence any person to come to the polls, or to remain away, or to vote for or against any candidates. Separate nonpartisan primary and election ballots for judges of the supreme, circuit, and county courts were adopted.[29]

In Nebraska, an act of 1919[30] providing for delegate conventions to nominate the candidates for minor state offices was defeated at a referendum in 1920, by a vote of 49,000 to 133,000, the vote on the proposition being 38 per cent of the total primary vote. The referendum has been invoked on two acts of 1921.[31] One excepts from the direct primary law delegates to state, congressional district, and national conventions, and members of party committees. Party caucuses would select delegates in the election precincts. The state conventions are authorized to "transact such other business as may properly and legally be entertained by such conventions." The following section of the existing law was omitted: "No action shall be taken by said state conventions either for or against any person who is or may be a candidate for any office that is to be voted on at the next general election." The second extends the requirement of registration and party enrollment to all precincts and districts

[24] 1921, ch. 330.
[25] 1921, ch. 332.
[26] 1921, ch. 333.
[27] Special session, 1920, S. B. 48.
[28] 1921, ch. 220.
[29] 1921, ch. 224.
[30] 1921, ch. 90.
[31] 1921, chs. 85 and 93.

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other than cities of 7000 population and over, where the requirement now applies.

It is difficult to explain what has happened in Montana. An act of 1919[32] restoring conventions for the nomination of certain officers, referred to popular vote by the legislature, was defeated, 60,000–77,000. An emergency act of the special session[33] repealing the presidential preference primary was held subject to the referendum by the supreme court and was also defeated, 60,000–80,000. The special session seems to have repealed the enactment of the preceding regular session noted above.

It also passed a measure for the direct election of delegates to national conventions but eliminating the preference feature, substituting for a Wisconsin type of "open" primary a declaration of party affiliation at the primary, providing for the rotation of candidates' names on the ballot, permitting the selection of national committeemen by the state committees, and correcting some of the out-of-date sections of the popularly initiated act of 1912. On referendum, this was defeated,—66,000–74,000. An act of 1921 struck out of the presidential primary law the provision limiting each elector to vote for only one candidate for delegate to a national convention and one candidate for nomination as presidential elector.[34]

Wyoming has abolished the publicity pamphlet for the primary and the general election.[35] Idaho[36] has substituted state convention for primary for the nomination of congressional and state candidates, and has authorized state committees to call conventions to elect delegates to national conventions. County conventions elect delegates to state conventions and members of state committees. The primary officials, to be appointed by the county committees and to serve without pay, are to provide separate polling places for the parties at party expense and may

[32] 1919, ch. 113.
[33] 1919, ch. 27.
[34] 1921, ch. 206; *Revised Codes* of 1921, secs. 671–676.
[35] 1919, ch. 36.
[36] 1919, ch. 107.

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reject the votes of persons adjudged not bona fide members of the party. Primary candidates are required to affirm that they believe in the principles set forth by the party in which they seek nomination, and that they are not becoming candidates as members of any partisan or nonpartisan organization other than that party; in addition they must file certificates of a county chairman, or a majority of the members of a county committee, or of five reputable members of the party, that have been members of the party for two years. The affidavits of the five party members can be contradicted by the affidavits of any other five reputable party members, and the issue decided by the courts. Delegates to state conventions are paid the amount of their carfare by the state. In 1921 a strong attempt to restore the direct primary succeeded in the house but failed in the senate. The houses then disagreed as to the time of reference on a proposal to submit the matter to the voters.

Colorado has abolished the use of voting machines.[37] In Nevada, county committees were authorized to certify to the county commissioners the names of those persons in each precinct from whom the commissioners could select primary election officers who are to serve without remuneration in contrast with the regular election officials.[38] County conventions, consisting of delegates selected at party mass meetings in each precinct, instead of the candidates of each party nominated at the primary, are to meet before, instead of after the primary, and select delegates to state conventions which replace the former state party-council type of convention. What use it is intended the convention should make of the power to "take such further action consistent with the provisions of this act concerning the affairs of their party within the state as they deem proper," is doubtful.

Washington[39] has substituted declaration of party at the primary polls, subject to challenge, for the previous party enrollment requirement, and denied a defeated primary candidate the privilege of becoming the candidate of another party at the

[37] 1921, ch. 117.
[38] 1921, ch. 248.
[39] 1919, ch. 163.

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general election. State and county conventions were officially recognized for other than nominating purposes,[40] and advisory state platform committees were provided for, to hold public hearings during the sessions of the conventions, which were admonished to make clear and concise statements of their principles and legislative programs. The closed primary was restored[41] and the law for registration, quadrennial outside incorporated cities and towns and biennial within them, was extended.

Oregon[42] forbids an unsuccessful primary candidate to become the candidate of any other party or an independent candidate. California has taken practically the same action[43] and the legislature passed a resolution[44] memorializing Congress to enact a presidential primary law requiring the nomination of all candidates on the same day in all the states. Arizona[45] has excepted from the amount which candidates may spend to secure their primary nomination "any sums of money expended for stationery, postage, printing, or advertisements in newspapers and picture shows." In New Mexico, a sort of double coupon ballot was adopted.[46] Each ballot is to be numbered on two corners. One of these numbers is to be detached when the election officer receives the ballot from the voter, and the other, folded and pasted down before the ballots are distributed, is not to be opened unless necessary in deciding a contested election. The number of the ballot cast by each voter is recorded.

But little has yet been done in the way of careful and systematic analysis of the operation of the direct primary. Studies of the New York and Michigan laws in this REVIEW have indicated some of the difficulties.[47]

[40] 1921, ch. 176.
[41] 1921, ch. 177.
[42] 1921, ch. 420.
[43] 1921, ch. 710.
[44] Assembly J. Res. No. 7.
[45] 1921, ch. 172.
[46] 1919, ch. 141.
[47] A. C. Millspaugh, "Operation of the direct primary in Michigan." 10 *American Political Science Review*, 710 (Nov., 1916); H. Feldman, "The direct primary in New York State." 11 *American Political Science Review*, 494 (Aug., 1917).

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The New York law (1913–1921) required designation petitions in all cases. Each year of a state election, however, the major parties have held "conferences" or "unofficial conventions." In no case since the adoption of the primary has an independent candidate in a state-wide contest defeated the recipient of a conference endorsement, that is, the regular organization candidate. Can it be that no equally fit candidate has entered the lists against the "slate," or is it possible that organization support is so overwhelmingly decisive that successful opposition becomes hopeless? The delegates to these conferences were not chosen by the party voters at all except by sufferance. True, unofficial primaries were frequently held, but so sure were the leaders in one case as to who would be delegates that several hours before the polls closed the chairman of the New York county committee announced the list of delegates and alternates. Primary contests have been the exception rather than the rule, especially in the cities.[48] The extent of participation in the primaries, a most important consideration, has declined materially during the years the primary has been in effect.[49] Consequently, one can hardly find much fault with the logic of the political leaders when they conclude that the voters do not care much for the direct primary.

Dr. Frank E. Horack,[50] after a study of the Iowa primary, while concluding that it should be continued largely as it is, states that for the last three primaries the Democrats have not

[48] The contest record for Monroe County, including the city of Rochester, since the primary was adopted follows: 1914, none; 1915, Republican, none—Democratic, one assembly contest; 1916, Democratic, none—Republican, one United States representative contest; 1917, none; 1918, Democratic, one United States representative contest—Republican, one assembly contest; 1919, none; 1920, none. In King's County (Brooklyn) for the twenty-three assembly nominations, there were, for the years 1917–1920, 23, 23, 24, 26 Republican candidates, respectively, and 26, 26, 28, and 25 Democratic candidates. These instances are somewhat extreme.

[49] This participation, the vote for the highest office in the Republican primary being expressed in percent of the party enrollment for the year, was, for New York City (1914–1920): 45, 36, 37, 35, 21, 17, 16. For the Democratic party the record was: 43, 41, 27, 1917 not obtained, 27, 21, 23.

[50] *Iowa Journal of History and Politics*, January, 1921.

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had a single contest for a state office, that the ballots for sixty-eight counties out of ninety-nine (those available) showed that 68 per cent of the county offices were uncontested in the Republican primary and 95 per cent in the Democratic. He comments: "Interest in the primary seems to have been on the decline since 1916, judging by the number of candidates," and "Indeed, party organization really controls the primary to a considerable degree." Dr. Charles Kettleborough says,[51] "An inspection of the primary election returns in Indiana and a casual familiarity with the adventitious processes employed, show conclusively that these powers (to name the candidates for public office and control the party machinery) are vested as securely in the party managers as they formerly were."

References to the direct primary in the messages of thirteen governors in 1921 furnish evidence of official opinion, showing wide differences.[52]

Press comment is also worthy of some attention; although it is well known that editors, like other mortals, are prone to believe what they wish to believe, and that it is probably less difficult for almost any other group to change its position on public questions—otherwise the much desired oracular reputation of editorial comment would be threatened. Opinions from about a score of important daily newspapers, from New Jersey to Texas and Oregon, indicate a prevailing sentiment of dissatisfaction; though some express the view that the direct primary has been an improvement and will not be repealed, and this latter attitude has been strengthened by the results of the primary elections of the present year.[53]

[51] 10 *National Municipal Review*, 166 (March, 1921).

[52] See "The Direct Primary weathers the Storm," in 10 *National Municipal Review*, 322 (June, 1921).

[53] The *Newark Evening News* has consistently favored the primary since before its adoption in the state. It states that while the law is not considered perfect by any means, there is a profound public sentiment against doing away with it until something better is discovered. As to effects, "so far as Essex county is concerned, the direct primaries resulted in the last three years in nominations for members of the state assembly and the board of freeholders that would not have been possible had the selection been left to the organization-controlled convention." Two points of view, not necessarily in conflict, come from Penn-

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How may the evidence be summarized? One of the most striking facts is the almost entire absence of any serious effort to extend the so-called presidential primary or to remedy its defects. In 1920, it was, from any point of view, a miserable failure. With the possible exception of Oregon and California, the definite movement has been away from the more direct toward the less direct method. Congress has done nothing, assuming that it could do anything after the decision of the Supreme Court in the Newberry case. Senator Norris has introduced a resolution for a constitutional amendment to allow Congress to provide for independent nominations for the presi-

sylvania: "We have found that the direct primary system has raised the standard of public servants. On the whole, Pennsylvania is satisfied with its operation and there is no indication that it will ever be repealed; more likely it will be strengthened." (*Philadelphia North American*). "The machine invariably names the nominee. The political organization gets behind a candidate with power and money. Independent movements are usually broken up by bringing fake candidates into the field for the purpose of splitting up the opposition. Primaries can almost always be controlled—always save when there is a tremendous uprising—by the politicians. Nevertheless, the primary laws are apparently permanent" (*Philadelphia Inquirer*).

Editorial opinion from Ohio is harmonious. The *Plain Dealer* reports: "The primary in the present form is not accepted as final and is under attack from about every direction—mainly upon certain defects, such as the necessity of declaring one's political faith, and the manipulation of the primary by political machines." The *Cincinnati Enquirer* believes the primary has "fallen into great disrepute and disregard if indeed it ever was entitled to the approbation of the public. Primaries are today in Ohio more brazenly manipulated by the politicians than ever were conventions. . . . . There has been no blocking of the channels for corrupt practices and the use of money." *The Fort Wayne* (Indiana) *Journal Gazette* asserts that the primary has not been satisfactory in operation or results, and that it is under attack from many quarters. The most noted defects are its failure to improve the general character of politics, obtain higher-grade men for office, its cost of operation, and the length and expense of primary campaigns. The last Democratic state convention frankly denounced the law; the Republican convention took similar ground in more guarded terms.

The Detroit *News* is favorable to the primary, believing it is here to stay although "lack of public interest prevents the best results from any system." Mr. Milton R. Palmer, of the Michigan legislature, replies at the request of the *Detroit Free Press:* "The primary system has changed methods but has made little difference on results. About the same class of people are candidates for office and they manage public business in very much the same way." "To a large extent the press has taken the place of the 'machine' in Michigan politics." "The conclusion is that the bosses are more numerous and less responsible."

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dency after the national conventions have adjourned as a means of threatening them into more careful and popular action. One asks, where are the friends of the direct primary; can it not succeed in nominating them?

Further, it seems that, excluding the South, the states fall roughly into two groups. First, there are those, usually populous and urban, and chiefly eastern, in which fairly stringent party tests have been maintained by law or tradition, and in which the party organizations, with greater effort and inconvenience, it is true, still manage nominations to a very considerable degree.

The *Peoria* (Illinois) *Journal* considers the primary permanent, as no attack has been made upon it by any considerable body of citizens. The *Des Moines Capitol* believes it might be a satisfactory plan to nominate all the minor officers at caucuses and limit the primary to United States senator and governor, and until some such compromise can be reached would retain the present system. "The greatest objection to the primary is that it offers rewards to those who make the biggest promises on the stump." The *Des Moines Register* thinks there is a great deal of criticism of the present primary—the methods rather than the principle. "The feeling is that we went altogether too far towards government by direct popular vote." The *Sioux Falls* (South Dakota) *Argus-Leader* says: "If you understand our law, you have progressed farther than most of us here. Inasmuch as in most cases the proposal-men are elected by only a few voters, the plan is an open invitation to the building up of machine politics. . . . . The remainder of the law is not unpopular. I question whether the personnel of office-holders has been improved by any of the primary laws." The *Aberdeen* (South Dakota) *American* states that the primary is attacked by the dominant Republican party, notwithstanding an impregnable machine organization can be created under it. A return to the simple direct primary, with convention nomination of state officers, is the ideal most generally sought.

The *Capitol News* (Boise, Idaho) forecasts the reënactment at some future date of the primary for state and congressional office. A former newspaper man holds that the state-wide primary invited the incompetent who could fool the people, that the sentiment three years ago was so strong against the primary that it was almost repealed outright, and that a fight is still waged by friends and foes. The *Portland Oregonian* says editorially: "When the public understands a little better that under the primary party organization is supplanted, and individual and personal politics takes its place, with no improvement over the old condition not wholly due to public sentiment, there may be invented and adopted a better method of selecting candidates for office." "Every candidate is his own party and the goat has as good a chance as the sheep—if he makes enough noise." "There is not a vast difference in virtue between the opportunity of choice among self-appointed candidates often wanted only by themselves, and the privilege of perfunctorily ratifying candidates who are at least wanted by somebody." The *San Francisco Chronicle* thinks the primary "impairs party respon-

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Here a point should be noted. It is common to argue that the opposition of the party organization is proof that it cannot control the primary. The primary opens a field for the disgruntled and those who believe they have not been properly cared for. This is a form of independence which probably profits the public very little. Naturally, since the organization could deal with it with less effort, though ordinarily little more effectively, under the convention than under the primary, the organization prefers the convention system because it conserves more strength and money for fighting the other party.

sibility, the only alternative of personal government," that its specific defects have been: the supplanting of public conventions by the private caucus; intra-party quarrels; enormous sums spent in campaigns; the substitution of orators for business men in the conduct of public business.

The *Houston Chronicle* admits that "primary elections during recent years have been very, very disappointing, and the candidates not of the high character seen in former years. . . . . Many of our best citizens are clamoring for a return of the convention method." Mr. Tom Finty of the *Dallas Journal* states: "Within the last six or eight years there has been a visible growth of expressed opposition to the new system. It is my opinion that a majority of the people are against it but most of them hesitate to speak aloud because they are obsessed by the promoted belief that the 'people' are hog-wild over the system. . . . . It has transpired that only men of wealth or who are backed by men of wealth can run with any hope of success. One candidate for governor spent $82,000 to get the nomination."

The results of the primary elections of the present year, in Indiana, Pennsylvania and Iowa, have revived the discussion of the effects of this method of nominating candidates. The *Philadelphia North American* considers that the success of Pinchot "demonstrated in memorable fashion the supreme value of the open primary as an instrument of democracy." David Lawrence, in a Washington dispatch to the *New York Evening World*, referring to the influence of women in these primaries, writes: "Women are believers in the direct primary system and will fight tooth and nail a return generally to the convention system." The *Chicago Daily News* views the nomination of Pinchot as a striking vindication of the direct primary. At the same time there has been a revival of criticism on account of the expense of an active primary campaign. The *Baltimore Sun* holds that "there can be no step backward from the primary to the outworn convention system with its bossism, its deals and its thwarting of the popular will," but notes also that: "The direct primary system has some grave defects. They must be got rid of, if possible; but how to do it is a question." And the Washington correspondent of the *Seattle Times* maintains that there is a distinct trend against the direct primary, though admitting that it may have been interrupted by such popular successes as these of Pinchot and Beveridge (*Literary Digest*, May 27, June 3, June 17, 1922).

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Then there are those states, usually less populous and less urban, chiefly west, north-central or mountainous, where there is possibly more individual thinking, where at any rate party ties sit more loosely, perhaps because of frequent insurgent movements, largely agrarian. The voter desires to vote in the primary of the party whose candidates will be elected. Primaries are by law, or become by practice, open. Party labels are largely meaningless and the voter so regards them. At present, conservative Republicans are reported to be coaxing and adjuring the Democrats to come into the Republican primary and help them unhorse LaFollette.[54] It is easy to denounce those who oppose this inter-party invasion, but it must be recognized that there may be honest Republicans and Democrats, however indistinct the line between them, who do not believe, let us say, in the program of the Nonpartisan League. They resent the transformation of either old party into an agent of the league. It is safe to say that a great deal of the recent primary agitation in Minnesota, Nebraska, Montana, Idaho, and Washington is due to the activities of the league.

It may be questioned whether there can be really permanent and meaningful political groupings in state politics. If there can be, there seems no justification for allowing members of one party to select the candidates of another. Such a mixture of principles and candidates would be absurd. There can be no party responsibility that way. If, on the other hand, there cannot be permanent groupings, let the voters break into groups, refuse to continue the present party fiction, eliminate the primary, and adopt proportional representation for representative bodies, and nonpartisan primaries or an effective system of preferential voting for elective executive officers. That would be logical and there is a tendency in that direction. If there cannot be somewhat stable political groupings based on real or fictitious differences, then we are through with party government as we have known it, and just what will follow is difficult to predict. Popular government has been so far party government, least so

[54] Walter J. Millard, Field Secretary, American Proportional Representation League and National Municipal League.

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perhaps in Switzerland, and a regrouping to settle the questions of each succeeding election is imaginable but hardly practicable, except for ideally intelligent and devoted citizens, such as our political workers would call high-brow goo-goos. Even then the method would meet serious obstacles in populous states of considerable area.

There is undoubtedly a popular sentiment for the primary which is in a degree justified. In part, however, it is due to the fact that the first effective regulation of registration and voting processes in some states came along with the direct primary. Part of it, further, is due to the belief in popular capacity to perform any political task, such as is evidenced in the supposedly popular hostility to the abolition of elective offices. The people are, after all, little more distrustful of a political convention than they are of a legislature, and what saves the legislature is the fact that its functions cannot be taken over so readily simply because they are more numerous. But as legislatures exercise more real control in proportion as they eschew details and avoid trying actually to govern, so it is possible that an intelligent electorate will be more effective by means of similar tactics. No numerous private body follows the direct primary scheme in its elections. A committee on nominations is the common practice. Whether the conditions of such elections are inherently different from political elections is an interesting question.

People believe the primary offers a better agency of popular control chiefly because it seems to force the successful candidate for nomination to credit his success to the people, to become their man. But in every extensive primary campaign there are numerous intermediaries. Influential friends, newspaper owners, contributors to campaign funds, and especially organized groups, will play a part which the candidate will feel obliged to recognize. The honest convention system certainly tended to make the candidate feel an obligation and duty toward his party. That seems unobjectionable if parties are based on principles, and government on parties. If principles vanish, obligation to party becomes obligation only to a vote-getting organization or to its leaders. If the decline in popular responsiveness of their conventions resulted in part from the disappearance of issues between parties, it would seem that a revival of a real significance

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in party conflict might lessen the reasoned opposition to the convention.

What about the politicians? Their services are commonly conceded to be valuable and they seem to be with us still. Is it not strange that, in state after state, governors and legislators, nominated by direct primary, seek its abolition? What is the explanation of the fact that in Nebraska, after the act of the 1919 legislature restoring the convention for minor state officers was defeated on a referendum, the 1921 legislature passed an act providing for state and county conventions to precede the primaries, the delegates to which should be elected at party caucuses? If the legislators believe in the direct primary, why do they attempt to destroy it? If they do not believe in the primary, how were they nominated? If they do not believe in the primary, but know the people will punish those who touch it, truly their persistence is evidence of a willingness to sacrifice themselves for the public good. Perhaps the enemies of the primary accept the famous Burkian theory of a representative's function. May it not be true that the politicians resent the primary as lawyers would resent a movement for the submission of legal cases to decision by popular vote?

The results of the primary in several states this year have strengthened the convictions of many who believe in the direct primary. It may be agreed that, granted the primary nominees could not have succeeded under a modified system, the present primary has justified itself. So much opposition to the probable recipients of convention nominations would under any popular system have warranted a referendum. It should not be overlooked, however, that there was no general movement against the organization in Pennsylvania; both regular senatorial candidates were nominated without serious opposition. Roosevelt and Hughes were quite as distasteful to the Republican organization in New York years ago as was Pinchot this year in Pennsylvania, but they were nominated by convention. Beveridge first received a United States senatorial nomination in Indiana long before the direct primary was adopted. The direct primary affords the party voters an excellent chance to register a sharp rebuke to their would-be leaders, and for this purpose such an

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opportunity should be preserved within easy reach of the rank and file.

The writer's proposal for primary reform has been set forth elsewhere.[55] The plan for a preliminary recommending convention is frequently advanced by theorists, practical politicians and officials. It has merit. But the participation in one primary is already too slight, and South Dakota seems to prove that participation in a pre-primary primary will be less. The failure of the voter to attend the primary should be recognized as a fact. Party committees should be elected at the regular election by the full party membership. Designation of candidates for committee membership could be made by petitions of say ten persons residing anywhere in the state. This would permit a group of leaders to take the party sense on their leadership at little expense, and would make the candidate's petition a real advertisement for him. The party committeemen chosen at the general election could be assembled before the succeeding election and permitted to recommend candidates by recorded, published vote, from a list of those who should have filed designating petitions similar to those required from committeemen. Independent designation should be permitted and the primary employed only to settle contests. This plan seems to possess the following advantages: It would permit effective party conference; it would secure the choice of committeemen by, and their responsibility to, the full party vote; it would regularize what is now the practice of an irresponsible organization in many states, and permit a drafting of candidates in the states where now everything is left to the self-advertisers; it would not lessen the opportunity which the primary now affords, of combatting objectionable candidacies and reducing the organization to submission.[56]

[55] 10 *National Municipal Review*, 603 (December, 1921).

[56] The legislative reference department of the Ohio state library is preparing a digest of the primary laws of all the states. The legislative reference section of the New York state library has conducted by questionnaire an inquiry into the operation of the primary in many states based on the opinions of informed persons in the states. The platforms of both major parties in Maine advocate the repeal of the direct primary law. The bureau of research in municipal government of Bowdoin College has collected the opinions of many political scientists, politicians, and officials, throughout the country regarding the direct primary, as a guidance for legislative action.

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Federal Control over Industry. Legal history teaches two doctrines, which seem at first glance diametrically opposed to each other, with reference to the current agitation concerning the dangers of federal encroachment. First, that the agitation, in so far as it is called out by a temporary accidental state of affairs due to the war, is ephemeral. On the other hand, the essential facts involved are of a type that are always with us. In other words, federal encroachment, when stripped of the mask and guise that temporarily makes it seem dreadful, is a perfectly natural phenomenon quite familiar to students of Anglo-American law, and, for that matter, of other legal systems.

As a bogie it appears periodically to frighten us. The last time it wandered on earth was thirteen or fourteen years ago. A flood of periodical literature, at least two books, the major part of a session of the American Political Science Association, and two of the leading addresses before the American Bar Association, all in 1908, make up the bulk of the recent, though not of the current, bibliography of the subject.[1] The state of mind of the country at that time was humorously illustrated at the Gridiron Club dinner of 1907. There one who was supposed to impersonate the President of the United States of ten years later erased the chalk lines which divided the states on a map of the United States. What prompted such feelings at that time was, of course, the aggressiveness of the administration of Theodore Roosevelt which not only made the average citizen feel the presence of the national government as a factor in his daily life, but which had the further merit or demerit of being well advertised. The big stick

[1] *Proceedings* of the American Political Science Association, 1908: Leacock, "The Limitation of Federal Government;" Ford, "The Influence of State Politics in Expanding Federal Power;" Moore, "The Increased Control of State Activities by Federal Courts;" Anderson, "Increase of Federal Power under the Commerce Clause of the Federal Constitution." Papers before the American Bar Association, 1908: Hanford, "National Progression and the Increasing Responsibilities of our National Judiciary;" Farrar, "The Extension of the Admiralty Jurisdiction by Judicial Interpretation." Books: Pierce, *Federal Usurpation* (New York, 1908); Moseley, *Federal Supremacy: A Study of the Power of Congress Over Railroads* (Privately printed, 1907).

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of the cartoonist was perhaps as effective as the list of new statutes, or the prosecutions under old statutes attributable to this administration, in awakening any sticklers for states rights who still remained in the South and even in winning converts in the North to an appreciation of our country's peril. The words of Theodore Roosevelt uttered in 1907 were still fresh in the mind of the country:

"State rights should be preserved when they mean the people's rights, but not when they mean the people's wrongs; not, for instance, when they are invoked to prevent the abolition of child labor, or to break the force of laws which prohibit the importation of contract labor to this country; in short, not when they stand for wrong or oppression of any kind or for national weakness or impotence at home or abroad. . . . . The states have shown that they have not the ability to curb the power of syndicated wealth, and therefore in the interests of the people it must be done by national action."[2]

A federal child labor bill had been introduced and was being met by serious opposition from the South. Furthermore, as one of the speakers before the American Political Science Association said, "The attention of the country has been recently sharply called to the matter of state activities by the federal courts in several cases decided before the Supreme Court."[3] The text makes clear that he refers particularly to the cases of *Ex parte Young*[4] and *Hunter v. Wood*,[5] with reference to state attempts to regulate railway rates.

During the administration of President Taft, the national government continued most of the activities of the preceding administration, but with much less noise. And it so happened that the failure of the child labor bill and the holding of the Supreme Court that the Federal Employers' Liability Act was unconstitutional, allayed the fears of federal usurpation for the time being.[6]

[2] Quoted in Pierce, *op. cit.*, p. 270.

[3] Moore, *op. cit.*, p. 69.

[4] 1908, 209 U. S. 123–204.

[5] 1908, 209 U. S. 205, 211.

[6] A child labor act was advocated at that time by Senator Beveridge and one was passed for the District of Columbia (May 28, 1908, 25 Stat. at L. 420). For a contemporary discussion of the federal Child Labor Bill then pending, and the litigation over the Employers' Liability Act for Carriers (Act of June 11, 1906, 34 Stat. at L. 232), see Pierce, *op. cit.*, 284–291. The Employers' Liability Act was held unconstitutional for failing properly to exclude intrastate commerce from its scope, on January 6, 1908, in Howard v. Illinois Central R. R. Co. (207 U. S. 463, 52 L. ed. 297). It was superseded by a more carefully drawn act, that of

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Early in the course of the next administration, it was held that the Migratory Bird Act could not be upheld either as an exercise by Congress of the power to regulate commerce or as an attempt to protect the property of the United States.[7] It was beginning to look as if Hamilton had been right after all when he said, "It will always be more easy for the state governments to encroach upon the national authorities than for the national government to encroach upon state authorities."[8] One may surmise—if one is permitted to wander into the realm of hypothetics—that the subject would hardly have been revived today had it not been for the demonstration of the latent powers of the national government which the war afforded. While it was on, there was a widespread feeling that it was unpatriotic to question the power of the national government in any respect. Under the impetus

April 22, 1908 (35 Stat. at L. 65), amended April 5, 1910 (36 Stat. at L. 291), and upheld in Mondou v. N. Y., etc. R. R. Co. (1908, 223 U. S. 1, 56 L. ed. 327). Cf. also Pederson v. R. R. Co. (1913, 229 U. S. 146, 57 L. ed. 1125). A Child Labor Act was passed September 1, 1916 (39 Stat. at L. 675), the constitutionality of which was denied in Hammer v. Dagenbart (1918, 247 U. S. 251, 62 L. ed. 1101). Cf. Gordon, "The Child Labor Law Case," 32 *Harvard Law Review*, 45. See also note 59.

[7] The Migratory Bird Act (March 4, 1913, 37 Stat. at L. 847) was held unconstitutional in the following cases in the state and federal courts: United States v. Schauver (1914, 214 Fed. 154); United States v. McCullagh (1915, 221 Fed. 288); State v. McCullagh (1915, 96 Kans. 786, 153 Pac. 557); State v. Sawyer (1915, 113 Me. 458, 94 Atl. 886). In this instance, the resources of the national government were not exhausted by resort to the theory of interstate commerce or the protection of property of the United States or implied powers of the national government. The treaty-making power was invoked in order to bring about directly what could not be done by legislation. On August 16, 1916, a treaty between the United States and Great Britain on behalf of Canada was made with reference to the subject, and on July 3, 1918 (40 Stat. at L. 755), it was put into effect by a reënactment of the provisions previously held unconstitutional. Under the second act prosecutions were commenced in several states to raise the question whether the President and Senate could thus make possible by treaty what Congress could not otherwise do by legislation. All of the district courts seemed to have agreed that they could. In State of Missouri v. Holland (1920, 252 U. S. 415, 64 L. ed. 64), the second act was held constitutional. See the learned note, antedating this decision, in 33 *Harvard Law Review*, 281.

[8] *The Federalist*, No. 17, quoted by Leacock, *op. cit.* The devious ways in which the state may encroach on federal authority are nowhere better illustrated than in Professor Powell's studies on "Indirect Encroachment on Federal Authority by the Taxing Powers of the States," 31 *Harvard Law Review*, 321, 572, 721, 932, and 32 *ibid.*, 234, 374, 634, 902. This study, however, shows also that in the last ten years there has been not only a tendency to check such encroachment by judicial decisions but also a move in the opposite direction.

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of that feeling, such a book as Commissioner Henry Lichfield West's *Federal Power, its Growth and Necessity* (1918) is to be explained. The author not only admits the fact of federal usurpation—he glories in it.

The acute stage of national control brought about by war conditions has passed. And yet if a chart could be drawn with a curve in which the accidents of personality and temporary necessity could be averaged, there is no doubt that it would show a great increase of the relative importance in our lives of national control as compared with state control. What is not so apparent is the method by which the national government has proceeded. Most of the discussions have been partisan, to the extent at least that they have either accused the courts of surreptitiously amending the Constitution or else have defended and even praised the courts for their readiness to adapt the Constitution to new conditions.

What has actually been done, however, is by no means the work of the courts alone. The part of the executive in the Roosevelt and Wilson administrations was far more conscipuous than that of the courts. The legislative contribution to its development will be apparent from a mere enumeration of the principal statutes involved: the beginning of the authorization by Congress in 1866 of transcontinental railways,[9] the Interstate Commerce Act of 1887[10] and its amendments,[11] and a host of smaller acts such as the Sherman Anti-Trust Act of 1890,[12] the Lottery Act of 1895,[13] the Safety Appliance Acts of 1893, 1903, and 1910,[14] inspections of grasses, etc., 1904[15] the Employers' Liability Acts

[9] Act of June 15, 1866 (14 Stat. at L. 66). The act was "to facilitate commercial, postal and military communication among the several states." This act, which represents the first attempt of the government to grant charters for railroads in states without their consent was upheld even as to roads within a state, in *California* v. *Pacific* R. R. Co. (1888, 127 U. S. 1, 32 L. ed. 150).

[10] Act of February 4, 1887 (24 Stat. at L. 379).

[11] Act of March 2, 1889 (25 Stat. at L. 855); act of February 10, 1891 (26 Stat. at L. 743); act of February 19, 1903 (32 Stat. at L. 847); June 29, 1906 (34 Stat. at L. 584); June 18, 1910 (36 Stat. at L. 539); May 29, 1917 (40 Stat. at L. 101); August 10, 1917 (40 Stat. at L. 272); February 28, 1920 (41 Stat. at L. 456, 474).

[12] Act of July 2, 1890 (26 Stat. at L. 209).

[13] Act of March 2, 1895 (28 Stat. at L. 963). See also notes 45 and 46 below.

[14] Acts of March 2, 1893 (27 Stat. at L. 531); March 2, 1903 (32 Stat. at L. 943); April 14, 1910 (36 Stat. at L. 298).

[15] Act of April 28, 1904 (33 Stat. at L. 283).

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of 1906, 1908 and 1910,[16] the Hallmark Act of 1905 and 1906,[17] the Commodities Clause[18] and the Pure Food and Drugs Act[19] of the same year, standards for grades of cotton, inspection of seed grains, etc., 1908,[20] the Meat Inspection Act of 1907,[21] the White Slavery Act of 1910,[22] the act as to arbitration of carriers labor disputes of 1913,[23] the Migratory Bird Acts of 1913[24] and 1918, the various package marking acts,[25] the Federal Reserve Act[26] and the Webb-Kenyon Liquor Act[27] of the same year, the Federal Trade Act[28] and Anti-trust Act of 1914,[29] the Farm Loan Act of 1916,[30] the Child Labor Act of 1916,[31] the Eight-hour Railroad Act of 1916.[32]

By no means every attempt of Congress has been upheld by the Supreme Court. Nor has that court acted uniformly in the direction of extending national power. It declared, for example, in 1869 that insurance was not commerce,[33] and having sworn to its hurt, it changed not.[34] Its definition of commerce, while very comprehensive in some respects, is after all surprisingly limited. The famous sentence in

[16] Act of June 11, 1906 (34 Stat. at L. 232); April 22, 1908 (35 Stat. at L. 65); April 5, 1910 (36 Stat. at L. 291). Cf. note 6, above.

[17] Act of February 21, 1905 (33 Stat. at L. 732); June 13, 1906 (34 Stat. at L. 260).

[18] Act of June 29, 1906 (34 Stat. at L. 584).

[19] Act of June 30, 1906 (34 Stat. at L. 768).

[20] Act of May 23, 1908 (35 Stat. at L. 256).

[21] Act of March 4, 1907 (34 Stat. at L. 1256). Earlier acts touching on the subject had been passed in 1890, 1891, 1903, 1905, and 1906.

[22] Acts of March 26, 1910 (36 Stat. at L. 263); June 25, 1910 (36 Stat. at L. 825).

[23] Act of July 15, 1913 (38 Stat. at L. 103).

[24] See note 7, above.

[25] Acts of August 3, 1912 (37 Stat. at L. 251), as to branding of apple barrels; March 4, 1904 (35 Stat. at L. 1137), as to intoxicating liquor; August 23, 1916 (39 Stat. at L. 530), as to barrels of lime; August 20, 1912 (37 Stat. at L. 316); as to conspicuous branding of horse meat, Act of July 24, 1919 (41 Stat. at L. 234, 241).

[26] Act of December 23, 1913 (38 Stat. at L. 251).

[27] Act of March 1, 1913 (37 Stat. at L. 699).

[28] Act of September 26, 1914 (38 Stat. at L. 717).

[29] Act of October 15, 1914 (38 Stat. at L. 730).

[30] Act of July 17, 1916 (39 Stat. at L. 360).

[31] Act of September 1, 1916 (39 Stat. at L. 675). Cf. note 6, above.

[32] Act of September 3, 5, 1916 (39 Stat. at L. 721).

[33] Paul v. Virginia (1869, 8 Wall. 168, 19 L. ed. 357).

[34] N. Y. Life Insurance Co. v. Cravens (1900, 178 U. S. 389, 44 L. ed. 1116); N. Y. Life Insurance Co. v. Deer Lodge Co. (1913, 231 U. S. 495, 58 L. ed. 232). Cf. Cooke, *The Commerce Clause of the Federal Constitution*, secs. 7–9.

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Gibbons v. Ogden,[35] "Commerce undoubtedly is traffic, but it is something more: it is intercourse," was big enough to include the railroad,[36] the telegraph,[37] and the telephone[38] in their turn. But it has somehow or other carried with it the suggestion that commerce does not include anything but intercourse. It has been denied, for example, that a grain elevator engaged in the business of storing grain in the course of interstate transportation is engaged in interstate commerce,[39] and manufacturing and commerce have been emphatically distinguished. In Kidd v. Peterson,[40] Mr. Justice Lamar says that manufacturing is the transformation or the fashioning of raw materials into a changed form for use. In the case of the United States v. Knight, it was said:

"If it be held that the term [commerce] includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it will also include all productive industries that contemplate the same thing. The result would be that Congress would be invested to the exclusion of the states with the power to regulate not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries and mining;

[35] 1824, 9 Wheat 1, 229, 6 L. ed. 23.

[36] Consistently since the legislation of 1866, mentioned in note 9, above.

[37] The Ohio supreme court once held that the sending of telegraph messages was not commerce, Western Union Tel. Co. v. Mayer (1876, 28 Ohio St. 521). This decision has been completely overwhelmed, however, by the almost uniform holding of almost every other jurisdiction. Cf. W. U. Tel. Co. v. State Board of Assessment (1889, 132 U. S. 472, 33 L. ed. 409).

[38] Act of June 29, 1906 (34 Stat. at L. 584), added to the jurisdiction of the Interstate Commerce Commission telegraph, telephone and cable companies (whether wire or wireless) engaged in sending messages from one state, territory, or district to another.

[39] Cargill Co. v. Minnesota (1901, 180 U. S. 452, 45 L. ed. 619). The production of plays has been held not to be commerce under the New York penal code, People v. Klaw (1907, 106 N. Y. Sup. Ct. Rep. 341, 350, 55 Misc. Rep. 72). The baseball industry is not interstate commerce. Cf. 34 *Harvard Law Review*, 559; 16 *Michigan Law Review*, 867; The National League et al. v. The Federal Baseball Club of Baltimore, Inc. (48 Wash. L. Rep. 819); American Baseball Club of Chicago v. Chase (86 Misc. Rep. 441, 149 N. Y. Sup. Ct. Rep. 6). Nor is the presentation of grand opera by a company on tour interstate commerce, Metropolitan Opera Co. v. Hammerstein (1914, 162 App. Div. 691, 147 N. Y. Sup. Ct. Rep. 542). Nor is a personal service contract between citizens of different states interstate commerce, Williams v. Fears (1900, 179 U. S. 270, 45 L. ed. 186). Service rendered by a mercantile agency is not commerce, State v. Morgan (1891, 2 S. D. 32, 48 N. W. 314, [writ of error dismissed, 1894], 159 U. S. 261, 40 L. ed. 145).

[40] 1888, 128 U. S. 1.

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in short, every branch of human industry. The business of refining sugar is a manufacture, and not an operation of commerce, and therefore not within the commerce clause of the Federal Constitution."[41]

The theory is simple enough. Yet when the Supreme Court was faced with the practical question of determining which initiatory processes connected with selling and transporting were commercial in their nature and which of a manufacturing type, their inaccurate economic definitions of these economic terms caused them endless trouble. The solicitation of a drummer was held to be commerce.[42] The business of conducting a correspondence school is interstate commerce,[43] as is that of selling natural gas after its severance from the ground,[44] and the transmission of lottery tickets.[45] Indeed it would seem that not only the transmission but also the issuing of lottery tickets was within national control.[46] This leads to the narrow question—not entirely unrelated to the control of patents and copyrights—whether the misbranding of goods within a state may be made a national offense? It was so held, in United States v. Chas. L. Heinle Specialty Co.,[47] and the Marking of Packages Act of March 3, 1913, carries this theory further. The commodities clause of 1906 as construed in United States v. D. & H. Railway Co.[48] goes far towards establishing the doctrine that the conditions under which a thing is produced may be controlled by means of the national power to exclude articles produced in the prohibited manner from interstate transportation.

Finally, the Anti-Trust Act of 1914 affects industry directly as well as indirectly in that it speaks of the unlawfulness of the condition that the purchaser or hirer of one's goods or wares shall not use the goods of a competitor.[49] Such industries as the boot and shoe manufacturing

[41] 1895, 156 U. S. 1.

[42] Brennan v. City of Titusville (1893, 153 U. S. 289, 38 L. ed. 119).

[43] International Textbook Co. v. Pigg (1902, 217 U. S. 91, 54 L. ed. 678).

[44] Haskell v. Gas Co. (1911, 224 U. S. 217, 56 L. ed. 738).

[45] Champion v. Ames (1903, 188 U. S. 321, 47 L. ed. 492).

[46] In the lottery case, cited above, Mr. Justice Harlan says: "May not Congress, for the protection of the people of all the states, and under the power to regulate interstate commerce, devise such means, within the scope of the Constitution, and not prohibited by it as to drive that traffic out of commerce among the states?"

[47] 1910, 175 Fed. 299.

[48] 1908, 213 U. S. 366, 53 L. ed. 836.

[49] Section 3 makes it unlawful for any person engaged in commerce, in the course of such commerce to lease or make and sell, or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities whether patented

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business which have heretofore been supplied with machinery on exactly that basis are particularly affected. And the Federal Trade Commission Act of the same year gives such broad powers to the commission, that it is not easy to say where the line will be drawn between what the Supreme Court calls commerce and what it prefers to call manufacture.[50]

These illustrations of national control over industry are limited to the operation of statutes under the interstate commerce clause. The power of making or unmaking a business under the postal authority through fraud orders,[51] the power of fostering or even creating new industries or of destroying old ones through the imposition of tariffs, the extension of the jurisdiction of United States courts by keeping the Bankruptcy Act alive,[52] and the chance of abusing national powers are beyond the scope of this study. An extreme example may, however, be mentioned. When Congress (in 1913), had determined to interfere in the Paint Creek disturbances in West Virginia, it sent a committee to investigate whether there had been any violation of the immigration laws or other national laws involved in the causes of the disturbance. The same method was resorted to in connection with purely local disturbances in the mines of Michigan and Colorado. The presumption, apparently, is that any community would rather make

or unpatented. . . . on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, etc. of a competitor.

[50] In section 4 the word "commerce" as used in the act is defined as follows: "Commerce means commerce among the several states or with foreign nations or in any territory of the United States." In section 5, "unfair methods of competition in commerce are hereby declared unlawful. The commission is hereby empowered and directed to prevent persons, partnerships or corporations, except banks and common carriers subject to the acts to regulate commerce, from using unfair methods of competition in commerce." In other words, commerce is distinctly understood as embracing something more than the transportation that had hitherto been emphasized as the chief, if not the only, element of interstate commerce.

[51] Based on Revised Statutes 3929 as amended, Act of September 19, 1890, ch. 908, sec. 2, and Revised Statutes 4041 as amended, Act of September 19, 1890, ch. 908, sec. 3.

[52] The earlier bankruptcy acts were all ostensibly passed for emergencies, and accordingly repealed within a few years after their passage. This was undoubtedly the feeling of most people with reference to the Bankruptcy Act of July 1, 1898. Instead of being repealed, however, it is still on the books (amended February 5, 1903, June 15, 1906, June 25, 1910, March 2, 1917), and from present indications is likely to remain a permanent part of the jurisdiction of federal courts.

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peace at any price than submit to the visitation of a congressional committee, or possibly there lurks behind this method the notion that if necessary an army can be sent into the state where the investigation is being carried on in order to protect the congressional committee in its function of investigating.

The real basis for the extension of national power over industry is the simple fact that the greatly increased facility of communication has made a business unit of the country. It is indeed open to question whether nationalization of power has gone or can go under our present Constitution as far as the actual nationalization of industry has gone. There are physical facts which the law *haud passibus aequis* attempts to follow. It is not so surprising to see chalk marks erased as it is to learn that the lines are mere chalk.

This consideration brings us to the second lesson of legal history. To what extent are the efforts of the national legislature, courts and executive authorities capable of being illuminated by reference to comparative legal history? The closest analogy seems to be furnished by the period when the Norman and Angevin kings of England were developing a national law and national courts to take the place of the innumerable local jurisdictions into which England had theretofore been divided. The entering wedge for this national jurisdiction was in those days the power of the king over the highway, as it is with us the power of the nation over the railway. The whole history of those times remains obscure until we realize that the king was not the fountain-head of justice, but that the local jurisdictions were to all intents and purposes states as independent of the central jurisdiction of the king's courts as our state courts are in theory independent of our national jurisdictions today.

Of the efficiency of these royal courts in arrogating to themselves all jurisdictions there can be little doubt. The local jurisdictions gradually sank into oblivion, and one after the other they disappeared. The subject matter that they had handled was dealt with by the king's courts or church courts or entirely neglected. It was many years before the expression "no wrong without a remedy" had even a presumptive force in the king's court, for there was always the possibility that a remedy existed in some other court.

What were the methods by which the king took the jurisdiction of the local courts? Many of the discussions of this part of English legal history are hazed over and obscured by the completeness of the victory of the king's courts. They suggest that the powerful Norman

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kings deliberately and openly introduced substitute actions of their own to take the place of causes of action normally entertained by local courts. As a matter of fact, the Norman kings were too cautious, their advisers too wise, and their position too insecure to permit of any such procedure. Besides, it must be remembered that legislation in the modern sense was unknown. That the Norman kings did not purport to introduce new laws is illustrated time and again by the use of the pious fraud of reintroducing the laws of King Edward the Confessor.[53] The most high-handed act of the Conqueror himself consisted of his tabulation of the rights which he in theory possessed as the legitimate successor of Edward on the throne.[54] And all of these rights he tabulated on the theory that land-holding was to continue and revenues to go on in accordance with the laws of the Saxons. When his right-hand man, Lanfranc, clashed with his half-brother Odo over the possession of certain lands, they had to call in old Bishop Athelric, an Englishman, to determine their claims in accordance with the laws of the land.[55] This old man whom, the chronicler tells us, they brought in on a wagon, is the very embodiment of the continuity of Anglo-Saxon laws under the conquerors. The very forgeries of this period are a tribute to the theory that the old law continued.[56] Otherwise, why speak in the name of Edward the Confessor?

[53] Thus in his charter to the Portgerefa and the citizens of London, William the Conqueror wills "that ye be worthy of all the laws that ye were worthy of in King Edward's day." (Liber Custumarum, pt. 1, pp. 25, 26. Text and translation in Stubbs' *Select Charters*.) The charter of liberties of Henry I, of the year 1100, recites: "The law of King Edward I give to you again with those changes with which my father changed it by the counsel of his barons." (Text in Stubbs' *Select Charters*.) Stephen's charter of 1135 recites: "All the good laws and good customs which they had in the time of King Edward I concede to them." (Translated in 1 *Translations and Reprints* 6, p. 5, from 1 *Statutes of the Realm* 4.)

[54] "So very narrowly," the Anglo-Saxon Chronicle tells us, "did he cause the survey to be made that there was not a single hide nor a rood of land nor—it is shameful to relate that which he thought no shame to do—was there an ox, or a cow, or a pig passed by, that was not set down on the accounts, and then all these writings were brought to him."

[55] The case of Lanfranc v. Odo is translated in *Essays in Anglo-Saxon Law*, p. 369.

[56] The great forgery which professes to be the laws of Edward the Confessor begins as follows: "Here begins the law of the glorious king of the English, Edward. Four years after the conquest of this country, England, by King William, with the counsel of his barons, he caused to be summoned throughout all the counties of the land the English nobles, the wise and those learned in their own law, to hear their customs from their own lips. Thereupon from each and

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Under these conditions there was theoretically but little for the king's court to do beyond the protection of the king's peace and the settlement of disputes in which the king was personally interested. Now the king's peace, it must be remembered, was not the only peace to be protected in England. There was the church peace, the house peace, the folk peace. To violate any of these was not necessarily to bring one under the jurisdiction of the king's court. The story has often been told of how the king's peace, beginning with the protection of the king's person and the prevention of disturbance in the king's presence or in his house, came to be extended to the king's servants in all places and eventually to persons specially taken under the king's protection and made his servants *pro tanto*.[57] Whole classes of persons came to be included. Before long great roads, the king's highways, and eventually all highways, came to be looked upon as directly involving the king's peace, and so gradually its force was felt throughout the country. It remained only for the king on his coronation as an act of grace to take all persons in England into his care, and thus establish the foundation of public prosecution for crimes in the king's courts for various private prosecutions in various courts. But the value of the king's peace as an entering wedge was not limited to criminal procedure. By alleging that the most ordinary trespass had been committed *contra pacem regis, vi et armis*, it became possible to bring any case before the king's justices. Other fictions, notably that of the king's debtor, by which the king's exchequer became a court for the trial of claims between man and man, gradually made possible the transfer of innumerable cases to the centralized courts.

With centralized courts there came a centralized law. In the days of Henry II there were various customs in England. In the days of Henry III it was possible to speak of the general custom of England, subject to slight local deviations.[58] To imagine that this transfer was

every county in the land twelve chosen men promised under oath that to the best of their ability they would set forth their laws and customs, omitting nothing, adding nothing, changing nothing."

[57] *Cf.* Inderwick, *The King's Peace*, Pollock, *Oxford Lectures*, "The King's Peace;" Howard, *On the Development of the King's Peace and the English Local Peace Magistracy*.

[58] *Cf.* 1 Pollock and Maitland, p. 163, on the decline of local customs in England. Gradually there develops a presumption that there is no local custom contrary to the general custom of England unless it is specially approved. The discussion ends with this significant statement: "No English county ever rebels for the maintenance of its customary law."

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accomplished without vigorous controversies of the nature of states rights claims is to misread the entire history of the thirteenth century. The controversies between the barons and the king are very largely controversies as to jurisdiction. So long as feudalism remained a factor in the lives of the people, the royal courts had rivals. It was not that the victory of the royal courts destroyed the feudal units. On the contrary, the feudal jurisdictions outlasted feudalism at least on paper. But as life in England became national, national jurisdiction had to expand to take care of it. It was not a question of the rights of localities, but of the duties of the nation.

And so it is with us. State lines are not so clear in life as they used to be. I do not prophesy their disappearance. But so far as they fail to correspond to actualities, we may depend upon the "law in action" to deviate from the law of the books so as to meet the practical needs of business. If eventually the law books come to record what has happened in life, it is misleading to brand the resulting federalization as federal usurpation. If anything is to be criticized or regretted in this connection, is it law or is it life?[59]

NATHAN ISAACS.

University of Pittsburgh, School of Law.

Federal Aid to the States. When a central authority orders a local subordinate government to take a certain course of action under penalty, it is more than likely that the enforcement of the order will lead to difficulties, and it may even result in open defiance on the part of the local government. The effect is very different, however, when the central authority merely establishes a standard and promises to turn over cold cash to the local units which meet the standard. With governmental units as with individuals, rewards for work properly done are more likely to produce desirable results than punishment for failure to obey orders. It is in recognition of this principle that so many of the states have adopted the subsidy or state aid system in education

[59] Since this paper was read at the meeting of the American Political Science Association in December, 1921, several important decisions have been handed down by the Supreme Court of the United States: two illustrate the firmness of the hold of the national power on railroads as the result of a long tradition [Railroad Commission of Wisconsin v. C. B. and Q. Ry. (1922) 42 Sup. Ct. 232 and State of New York v. U. S. (1922) 42 Sup. Ct. 239]; and the other the comparative weakness of the national power in connection with new fields of social legislation [Bailey v. Drexel Furniture Co. (1922) U. S. Sup. Ct. Oct. Term, 1921, No. 657 on the unconstitutionality of regulating child labor through federal taxation.]

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and have more recently established the same practice in road building. In Switzerland, where opposition to complete central control over education has been strong, the subsidy system has increased federal influence without taking the control out of the hands of the cantonal authorities. The British home secretary is given supervision over borough and county police by means of a subsidy. The local government has been reimbursed by the exchequer to the extent of one-half of the total cost of maintaining its police system whenever the home secretary certifies that certain standards have been met. Up to 1919 the contribution of the central government was limited to one-half of the cost of pay, including pensions, and clothing, but the present arrangement provides for the payment from the exchequer of one-half of all costs.[1]

It does not necessarily follow, however, that all subsidies are the result of conscientious endeavors on the part of the central government to secure efficient local administration through the diplomatic use of rewards. The opponents of national aid in the United States point out that the subsidy may be prompted by a desire to encroach unduly upon states rights, that it is sometimes used by politicians as a mantle to cover the sins of the extravagant appropriation of national funds for local purposes, and that the states are sometimes made to feel that the subsidy is a gift from the national treasury when, as a matter of fact, it means merely taking money out of one pocket and putting it into another.

Twelve acts providing for national aid to the states in some form or another are today on the statute books. These acts may be divided into three groups: (1) The laws enacted from 1862 to 1906, giving aid to the states with comparatively few conditions; (2) the recent acts which provide for the return to the state by the national government of a portion of the income from leases, royalties, etc., accruing from natural resources owned by the national government and located within the state; (3) the acts from 1914 to date, providing for conditional subsidies and placing a large amount of supervisory power in the national agencies.

In the first group belong the following: the Morrill Land Grant Act, July 2, 1862; Additional Aid Act, August 30, 1890; Adams Act, March 16, 1906, supplementing and amending the Hatch Act of March 2, 1887. The following are in the second group: the National Forest Fund Act, March 4, 1907; as amended May 23, 1908, March 1, 1911,

[1] *Report of the Committee on the Police Service of England, Wales and Scotland* (London, 1920).

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and June 30, 1914; the Oil Leasing Act, February 25, 1920; the Federal Water Power Act, June 10, 1920.

Acts providing for subsidies with detailed conditions are: the Smith-Lever Act, May 8, 1914; the Federal Aid for Roads Act, July 11, 1916, as amended November 9, 1921; the Smith-Hughes Act, February 23, 1917; the Industrial Rehabilitation Act, June 2, 1920; the Chamberlain-Kahn Act, July 9, 1918; the Sheppard-Towner Act, November 23, 1921.

The three acts in the first group were enacted for the purpose of encouraging agriculture and mechanical education. In the Morrill Act, which was the first law to grant national aid to the states, certain lands were set aside for the use of agricultural and mechanical colleges. The additional act passed twenty-eight years later provided for the annual payment of $25,000 to each state for the purposes set forth in the original act. The annual payment was later changed to $50,000.

These grants are comparatively free from conditions, and yet there are certain fundamental principles, such as the requirement of military training and the equal treatment of races, which the states are required to follow in order to receive the funds. The Adams Act gives $30,000 to each state for the use of agricultural experiment stations. Here too the conditions imposed are easily met, and the national agency has but little power compared with that enjoyed under the acts of the third type, which will be described presently.

As already indicated, the laws of the second type provide for unconditional grants to the states. Under the National Forest Fund Act, 25 per cent of the proceeds from forest reserves are turned over to the state in which the reserve is located to be spent for schools and roads under the direction of the state legislature. Over a million dollars was turned back to the states under this law during the first year ending June 30, 1921. The Oil Leasing Act returns 37½ per cent of bonuses and royalties from oil wells on public lands to the states. The director of the budget estimated that the amount returned during the last fiscal year would total one and one-half million dollars. As in the case of the forest funds, the state legislature has charge of the expenditure which must be for roads and education. The Water Power Act returns to the several states 37½ per cent of the proceeds from licenses for the use of water power on national lands. None of these acts conditions the payments to the state, outside of the proviso that the money received shall be expended for schools and roads. Neither is there any attempt on the part of the national government to supervise the details of expenditure.

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It is the third type of national aid that is particularly interesting to the student of government. The six acts of this group, while turning national money into the state treasury, impose conditions upon the states, the fulfillment of which is passed upon by national officials.

The Smith-Lever Act. This law not only inaugurated the idea of close coördination of national and state agencies but also established the "fifty-fifty" practice (duplication by state of national funds). Its purpose is to encourage instruction and practical demonstration in agriculture and home economics to persons not attending college.

The orginal act appropriated $1,080,000 to be allotted to the various states, with the proviso that the appropriation should be increased from year to year. In addition to the continuing appropriations provided for in the law, a special appropriation was made in 1919 which has brought the total appropriation for the fiscal year 1921–22 up to $5,580,000. This sum is apportioned among the states in the following manner: $480,000 is divided equally, $10,000 to each state; while the remainder is allotted to the several states according to rural population. In order to secure its allotment a state must duplicate all moneys received above $10,000. The duplication need not be from the state treasury, as all contributions from county or local authorities, from colleges, and from private individuals are credited to the state. In 1919–20, 67 per cent of the duplication came from state treasuries, 28 per cent from counties and the remaining 5 per cent from colleges and local governments.

But the state cannot fulfill the requirements of the law merely by duplicating the allotment of national money. All work done under the law is subject to the supervision of the department of agriculture and all plans and methods must be approved by the national government. In fact, all or any part of an annual allotment may be withheld from the state by the secretary of agriculture who, through the states relations service, administers the act. The land grant colleges are made the state coöperating agencies, the state legislature designating what college is to act in states that have more than one land-grant college. This arrangement means that the secretary of agriculture can, in effect, give orders that must be obeyed by a land-grant college operated almost entirely at the expense of the state. The college is naturally desirous of receiving the allotment and hesitates about taking any action which will call forth the disapproval of the national agency.

About 50 per cent of the amount spent under the Smith-Lever Act is for county agricultural agents, about 20 per cent for demonstrations

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in the field of home economics, and the remainder for agricultural specialists, boys' and girls' clubs, and publications. The beneficent effect of the law has been felt in the agricultural communities of every state in the Union, although some of the land-grant colleges are complaining, perhaps with some justification, that the hand of the national department is resting too heavily upon them.[2]

Federal Aid For Roads Act. This act followed the Smith-Lever Act by two years and was a further application of the dual principle of extending national control through state agencies, combined with the "fifty-fifty" scheme of appropriations. As the name indicates, the purpose of this law is to aid the states in the construction (but not the maintenance) of rural highways. Here again the secretary of agriculture administers the act, but this time through the bureau of public roads. The state highway department is made the state coöperating agency. All plans and projects for road building must be submitted to the national officials for approval. The national government, represented by the secretary of agriculture, has power to withhold all or any part of a state allotment in case the plans or projects are disapproved, or in case the regulations of the department are disregarded in the state road-building program. An interesting provision is that which gives the secretary of agriculture power to withhold all aid in case the state fails properly to maintain roads already built under the law.

This act carries a larger appropriation than all the other acts put together. $75,000,000 was appropriated for the fiscal year 1921–22, and the report of the director of the budget makes provision for $125, 000,000 for the year ending June 30, 1923.

The money is apportioned to the states in the following manner: The fund is divided into three equal parts. One part is apportioned according to population, one according to area, and one according to mileage of rural and star mail routes. Under this arrangement Texas receives the largest apportionment, with New York second, Pennsylvania third and Illinois fourth. No state is to receive less than one-half of one per cent of the total, and this stipulation increases the amount available to Delaware, New Hampshire, Rhode Island and Vermont.

The state must meet the national appropriation dollar for dollar. This appropriation need not necessarily come from the state treasury, as local government appropriations may be credited to the state. An

[2] *The Relations of the Federal Government to Education.* University of Illinois Bulletin, Dec. 26, 1921.

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exception to the "fifty-fifty" scheme is made in states where more than 5 per cent of the area of the state is made up of unappropriated lands. In such states the federal government may contribute to the extent of 50 per cent plus one-half of the percentage of the area of the state which is included in public lands. Under this rule ten western states may receive more than half the cost of road construction from the national treasury. Thus Utah may receive 75 per cent of the construction costs, while Nevada may charge as high as 87 per cent of her road construction costs to the national government. Outside of these ten states, where the limit varies, the contribution of the central government is limited to $20,000 per mile.

The national appropriation and the state funds matching it must be expended on a connected road system not to exceed seven per cent of the total mileage of highways in the state. There are other regulations, as to the amount to be spent on trunk highways, width of roadbed, etc., and all of these regulations may be enforced by the national government on penalty of losing national aid.

There seems to be little complaint of "federal interference" from the state highway departments. A questionnaire sent by the writer to the forty-eight state highway departments brought back an almost unanimous verdict of satisfaction with the present system of national aid for roads.

Only two of the thirty-six departments reporting failed to state that the situation in their respective states had been benefited materially by national aid, and in many instances the state officials were loud in their praises of the system. The objection to national aid which is voiced by many of the land-grant colleges does not seem to be shared by the coöperating agencies under the roads act.

Prior to 1917 the national government took no active part in road building. Now fully half the roads under construction receive national aid. In October, 1921 there were 27,000 miles of road completed or under construction.

The Smith-Hughes Act. The purpose of this act is to aid the states in the promotion of vocational education. There are three separate and distinct appropriations under this act. The first is to be used for salaries of educators in agriculture, and varies in amount from $500,000 in 1918 to $3,000,000 in 1926 and thereafter. This fund is allotted to the several states on the basis of rural population. The second appropriation is for salaries of educators in the field of trade and industry, including home economics. The amounts under this head coincide

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with the appropriation under the first head. The moneys under this head are allotted to the states on the basis of urban population, and not more than 20 per cent of the total can be used for teachers in home economics. This section of the law is criticised by those interested in the development of home economics because of the 20 per cent limit. Objection is also made to the basis of allotment, as the need for instruction in home economics is in proportion to total population rather than to urban population, which is the basis mentioned in the law. The third set of appropriations is for the training of teachers in the field of vocational education, and the amounts vary from $500,000 in 1918 to $1,000,000 in 1926 and thereafter. This fund is apportioned to the states on the basis of total population. The state directly, or through local government appropriations, is required to duplicate all national moneys, and both state and national funds must be spent for salaries only, except in connection with teacher training where money may be expended for buildings and grounds and other necessary expenses as well as for salaries. The state may accept one or more of these funds, but the teacher training fund must be accepted in order to get other funds in the same field. The funds must be used for the benefit of persons over fourteen years of age, and the work done must be below college grade.

The Smith-Hughes Law is administered by the federal board of vocational education, which, consists of the secretary of agriculture, the secretary of labor, the commissioner of education and three members appointed by the President and the Senate. The state must establish a board of not less than three members, which may be regularly established board of education, to act as the state agency to coöperate with the federal board.

The state board must submit detailed plans for carrying out its program of vocational education. This plan must be approved by by the federal board, which is given great advisory power and has arbitrary and plenary power to withhold the subsidy. There seems to be very little objection to "federal interference" on the part of the state authorities. Questionnaires submitted to the superintendents of public instruction in the several states indicated that an overwhelming majority of these officers are well pleased with the law and its administration.

The Industrial Rehabilitation Act. This act, which aims to coöperate with the states in the rehabilitation of persons disabled in industry,

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should not be confused with the so-called vocational rehabilitation act which provides for the training of ex-soldiers. The latter law is administered directly by the national government while the former is carried out by the states under the supervision of the national authorities. The federal board of vocational education, which is charged with administering this act, was up to a short time ago also in charge of the soldier rehabilitation. At present this board has charge of the Smith-Hughes Law as well as civilian rehabilitation. The administration of soldiers' rehabilitation has been turned over to the newly created veterans' bureau.

The state board provided for in the Smith-Hughes Law is made the state coöperating agency by the industrial rehabilitation act. As far as agencies are concerned this act is merely a supplement to the Smith-Hughes Act. In other respects, too, it resembles the latter measure. The federal board is given powers of supervision and may withhold national aid. The national appropriation, which is approximately $1,000,000 annually, is apportioned to the states according to population, and the state to receive the aid must not only obtain the approval of the federal board but must, as is the case in the Smith-Hughes Law, duplicate all national moneys directly or indirectly.

Any one who by reason of physical defect, due to any cause, is incapacitated for work may receive training through this fund. No national money, however, must be expended for buildings and grounds. A plan showing details of administration, courses of study, methods, qualifications of teachers, etc., must be submitted annually by the state authorities to the federal board. Unless this plan is approved no national aid can be received.

Chamberlain-Kahn Act. The purpose of this act is to coöperate with the states in fighting venereal disease. The work under this act has practically been discontinued during the year 1921–22 because of lack of funds. The director of the budget recommended an appropriation of $500,000 for the year ending June 30, 1923, and it would be improper to consider the law a dead letter. The inter-departmental social hygiene board, consisting of the secretaries of war, the navy, the treasury and their representatives, is designated as the national agency, and the state board of health is made the state coöperating agency. This board has advisory powers and may withhold aid. The act provides for the apportionment of funds among the states according to population, with the usual proviso that the states must duplicate national moneys. Duplication by the state was not required for

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the year ending June 30, 1919, but since that time the states have been required to match the national expenditures with state moneys.

The Sheppard-Towner Act. This act, commonly known as the Maternity Bill, aims to coöperate with the states "in the promotion of the welfare and hygiene of maternity and infants." This, the most recent of the acts extending national control through subsidies, was enacted in the closing days of the special session of the present Congress. It is too early to state its effect but it is already looked upon with favor by state officials. Less than a month after its final passage the states began to accept its provisions and to apply for a share in the appropriations. The act appropriates two funds: (1) $480,000 for the fiscal year 1921–22, to be divided equally among the states. For the following year and for four years thereafter, $240,000 is annually appropriated for equal distribution. The state need not duplicate this fund but its officials must submit to national supervision in order to obtain its equal share. (2) An additional appropriation of $1,000,000 annually for the next five years is to be apportioned to the states on the basis of population, after each state is allowed $5,000 regardless of population. The national moneys from this fund must be duplicated by the states by direct appropriation. The children's bureau of the department of labor is charged with administering the law, and the child welfare division of the state board of health is named as the state coöperating agency. The state board must submit detailed plans to the national bureau which enjoys great supervisory power and has authority to withhold aid. A unique feature is the provision which allows the state to appeal to the President of the United States from the decision of the chief of the children's bureau in case aid is withheld. The law creates the board of maternity and infant hygiene made up of the chief of the children's bureau, the surgeon general of the public health service and the commissioner of education. This board has very few duties outside of approving certain acts of the children's bureau.

Proposed Measures. Two bills now before Congress may be mentioned in connection with this discussion: (1) the so-called Americanization Bill introduced by Senator Kenyon, and (2) the Towner-Sterling Bill which provides for the establishment of a department of education.

The Kenyon Bill appropriates $5,000,000 the first year, and $12,500,000 annually thereafter, to be apportioned among the states according the number of illiterates and non-English speaking persons over sixteen years of age in each state. The secretary of the interior through

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the bureau of education is given wide supervisory powers and the power to withhold aid. Following the example set by the acts described above, the bill requires duplication, directly or indirectly, of all national moneys.

The Towner-Sterling Bill is a far-reaching measure. It provides for an annual appropriation of $100,000,000. This appropriation is divided into five parts each with a different purpose and each apportioned among the states in a peculiar way. In order to receive its allotment a state must duplicate from state or local treasuries all funds received from the national government. The secretary of education, proposed under the bill, is to be given only supervisory powers. While the bill goes farther in the matter of appropriations, and is wider in scope than any subsidy act now on the statute books, it gives less power to the national agency than any other subsidy measure. The secretary of education is given only advisory powers, and in case a state fails to comply with the law his only recourse is to report the matter to Congress. National aid cannot be withheld from any state which makes the annual report.

The measure is opposed by a very active group of educators who feel that even though the measure does not give plenary power to the national government, it is nevertheless a step in the direction of extreme centralization in education. Up to the present, however, a majority of educators seem to favor the bill.

The resemblances among the six acts establishing conditional subsidies are striking. Each one provides for close coöperation between the federal government and the state and gives the federal officers great powers over the coöperating state agency. In every case the statutes virtually declare certain state officials to be agents of the national government to the extent that their relationship with national officials is defined and established. In no case is the state under any compulsion to accept the law and the relationship is entered upon voluntarily. The requirement that the state must match the national appropriations from state or local treasuries is common to all the acts.

The cardinal principle of these acts seems to include two items: (1) A willingness on the part of the state to permit its officials to be advised if not actually commanded from Washington, in exchange for the payment by the national government of one-half of the expenses of activities that have been usually looked upon as belonging primarily to the state; (2) A willingness on the part of the national government to pay one-half of the expenses of these activities on condition that the state submits to a certain amount of national direction.

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It is very clear that the inauguration of the conditional subsidy system greatly increases the power of the central government and permits an encroachment upon the states which would clearly be unconstitutional if brought about by mandatory legislation. If the national government should order a state to build roads in a certain way, if, for example, the secretary of agriculture should issue an order to a state highway department, the enforcement of such an order would be flagrantly in violation of the constitution. Yet the secretary of agriculture may suggest to a state engineer that in case certain orders relating to road construction are not followed to the letter the national aid will be withheld, and there is little likelihood that the state official will refuse to follow the suggestion. To contend that the children's bureau in Washington can issue orders relative to maternity hygiene which the state board of health in Ohio will feel obliged to obey, or that a national educational board can dictate policies in the field of vocational education to a state board of education in Pennsylvania, would no doubt seem like contempt for the sovereignty of the states, and yet under the subsidy system a failure on the part of a state to give implicit obedience is the exception rather than the rule.

The arguments in favor of the extension of national control through subsidies are to a large extent the well-known arguments in favor of centralization and these need not be repeated here. It is further argued that the subsidy system preserves our dual system of government, leaving inherent power with the states but at the same time giving to the national government a mild form of authority which is conducive to uniformity.

Against the continuance and further growth of the subsidy system are offered the equally well-known arguments against centralization and in support of local autonomy. It is pointed out further that the encroachment on local autonomy under the subsidy is more insidious and dangerous to free government than abrupt and open moves toward centralization. It is contended also, and with some truth, that the singling out by the national government of certain activities for encouragement, draws state funds away from other equally worthy activities. Some educators say that it often happens that money which should be spent by the state on its general educational program is diverted to vocational education in order to secure the national allotment. Sometimes a state has limited funds at its disposal and is tempted to match the national allotment first, regardless of the claims of other branches of the state government upon the state treasury.

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At present popular opinion seems to look with favor upon the subsidies, except possibly in connection with the land-grant colleges where there seems to be considerable objection to national interference. Perhaps it will be discovered that the encroachment of the national government in the field of education is less desirable than it is in the matter of public health, rehabilitation and road building.

BEN A. ARNESON.

Ohio Wesleyan University.

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LEGISLATIVE NOTES AND REVIEWS

EDITED BY WALTER F. DODD

Soldiers' Bonus. Since the close of the World War, one of the most generally agitated public questions has been that of granting a bonus of some character to the ex-service men. The subject is now before Congress, has been considered by practically every state legislature, and has been acted on affirmatively by thirty-eight states. In six states, it was necessary to amend the constitution to permit the legislature to enact a soldiers' bonus law. In five of these states, the amendment was ratified by an impressive majority of the vote cast, and in one state, the election has not yet been held. The following table shows the result of the vote on the constitutional amendments heretofore submitted to the electors.

CONSTITUTIONAL AMENDMENTS

STATE	ART. AND SEC.	DATE SUBMITTED	VOTE	
			Yes	No
Maine	New, Sec. 19, Art. IX	Sept. 1920	105,712	32,820
Michigan	New, Sec. 20, Art. X	April 1920	471,159	185,602
Missouri	New, Sec. 44b, Art. IV	August 1921	210,238	100,131
Ohio	Sec. 2a, Art. VIII	Nov. 1921	949,109	324,447
Oregon	New, Art. XIc	June 1921	88,219	37,866
Pennsylvania	Sec. 4, Art. IX	Nov. 1924		

The bonus has been extended to soldiers in various forms, including the payment of a prescribed sum of money generally known as the cash bonus; loans for the purpose of acquiring a farm or a home, known as the land settlements; the remission of fees or the payment of a bonus direct to enable students to complete their education, known as the educational bonus; provisions for affording employment; and the payment of a gratuity to soldiers who are disabled and are physically unfit for profitable employment.

Cash Bonus. The cash bonus has been adopted and is now in force in Maine, Massachusetts, Michigan, Missouri, New Jersey, Ohio,

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Rhode Island, South Dakota, Wisconsin and Washington. Cash bonus laws have been enacted and are awaiting submission to a referendum vote in Illinois, Iowa, Kansas, Maryland, Montana and Pennsylvania; and provision for an optional cash, loan or educational bonus has been made in Minnesota, North Dakota and Oregon. The aggregate amount of money necessary to pay the foregoing enumerated bonuses is approximately $321,000,000. The following tables show the cash bonus laws now in force or awaiting the referendum, the amount of the bond issue and the amount of the bond paid.

CASH BONUS

(*a*) *Laws Adopted and in Force*

STATE	AMOUNT OF BOND ISSUE	AMOUNT OF BONUS
Maine[1]	$ 3,000,000	$100
Massachusetts[2]	20,000,000	$100
Michigan[3]	30,000,000	$15 each month of service
Missouri[4]	15,000,000	$10 for each month of service, not to exceed $250
New Jersey[5]	12,000,000	$10 for each month of service, not to exceed $100
Ohio[6]	25,000,000	$10 for each month of service, not to exceed $250
Rhode Island[7]	2,500,000	$100
South Dakota[8]	6,000,000	$15 for each month of service, not to exceed $400
Washington[9]	11,000,000	$15 for each month of service
Wisconsin[10]	15,000,000	$10 for each month of service, not less than $50

[1] Laws Special Session 1919, p. 62 and 264; Laws 1921, p. 113, 144 and 301.

[2] Laws 1919, p. 225; Laws 1920, Ch. 250.

[3] Laws 1921, p. 753, 759 and 834.

[4] Laws 1921, p. 695.

[5] Laws 1920, p. 317; Laws 1921, Ch. 16 and 293. This law was submitted to the voters on November 2, 1920, and was ratified by a vote of 534,532 to 165,555.

[6] Laws, 1921, p. 620.

[7] Laws 1920, Ch. 1832; Laws 1921, Ch. 2048. The question of a bond issue was submitted to a referendum vote and carried by a vote of 10,535 to 1, 303.

[8] Laws 1921, p. 502.

[9] Laws Special Session 1920, p. 7. This act was submitted to the electors in Nov., 1920, and was approved by a vote of 224,356 to 88,128.

[10] Laws 1919, Ch. 452 and 667. This act was submitted to the people on Sept. 2, 1919, and carried by a vote of 165,762 to 57,324. During the period ending 1920, the sum of $16,102,006.45 in bonus tax was collected.

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(b) *Laws to be Submitted to Referendum Vote*

STATE	AMOUNT OF BOND ISSUE	AMOUNT OF BONUS
Illinois[1]	$55,000,000	50¢ for each day of service, not to exceed $300
Iowa[2]	22,000,000	50¢ for each day of service, not to exceed $350
Kansas[3]	25,000,000	$1 for each day of service
Montana[4]	4,500,000	$10 for each month of service, not to exceed $200
Pennsylvania[5]	35,000,000	$10 for each month of service, not to exceed $200
Maryland[6]		

[1] Laws 1921, p. 66. This law will not become operative unless approved by the voters at the election of November, 1922.

[2] Laws 1921, p. 371. This law will not become operative unless approved by the voters at the general election of 1922.

[3] Laws 1921, p. 407. This law will not become operative unless approved by the voters at the general election of 1922.

[4] Laws 1921, p. 307. This law will not become operative unless approved by the voters at an election in 1922.

[5] Laws 1921, p. 478 and 1236; amendment will not be submitted to the people until November 1924.

[6] Laws 1922.

CASH, LOAN AND EDUCATIONAL BONUS

STATE	AMOUNT OF BOND ISSUE	AMOUNT OF BONUS
Minnesota[1]	$20,000,000	$15 for each month of service, not less than $50; or allowed $200 tuition fees in obtaining education to July 1, 1924
North Dakota[2]	One mill tax	$25 for each month of service to purchase a home or farm or complete his education
Oregon[3]	Not exceeding 3 per cent of assessed valuation of property of state	$15 for each month of service, not exceeding $500 or a real estate loan of $4000

[1] Laws 1919, p. 362; Laws 1921, p. 264 and 774; Laws Special Session 1919, P. 72.

[2] Laws 1919, p. 398; Laws 1919 Special Session, Ch. 55; Laws 1921, Ch. 103.

[3] Laws 1921, p. 823, 622 and Ch. 201.

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Court Decisions. The soldier bonus acts have been before the courts on several occasions and have been sustained in Minnesota, Washington and Wisconsin and held invalid in New York. (144 Minn. 415; 170 Wis. 218 and 251; and 231 N. Y. 465.)

Land Settlement Acts. Another form of aid to soldiers are the so-called land settlement acts. These laws are so designed as to extend aid to veterans of all wars, including the World War. In some states, they are provided for in addition to the bonus and incidentally are calculated to assist in the pre-emption and cultivation of lands not already under private ownership. There were three states in which constitutional amendments on this subject have been submitted to the people.

LAND SETTLEMENT—CONSTITUTIONAL AMENDMENTS

STATE	DATE SUBMITTED	VOTE		PROVISIONS
		Yes	No	
Kansas[1].....	Nov. 1920	223,499	201,559	Amount of fund determined by legislature.
Missouri[2].....	Nov. 1920	379,156	348,749	Issue of $1,000,000 of bonds.
Oregon[3].....	June 1919	39,130	40,580	

[1] Laws 1919, p. 448. [2] Laws 1921, p. 709 [3] Laws 1919, p. 837.

There are 18 states which have enacted settlement acts including Arizona,[1] California,[2] Colorado,[3] Idaho,[4] Maine,[5] Missouri,[6] Montana,[7] Nevada,[8] New Mexico,[9] North Carolina,[10] Oregon,[11] South Carolina,[12]

[1] Laws 1919, Ch. 141; Laws 1920, Ch. 58.
[2] Laws 1917, p. 1566; Laws 1919, p. 838; Laws 1921, p. 959 and 969. Will be submitted to a vote of the people in Nov. 1922.
[3] Laws 1919, Ch. 151.
[4] Laws 1919, Ch. 24.
[5] Laws 1919, Ch. 189.
[6] Laws 1919, p. 704; Laws 1921, p. 394.
[7] Laws 1919, Ch. 201.
[8] Laws 1919.
[9] Laws 1919, Ch. 127.
[10] Laws 1919, Ch. 266.
[11] Laws 1919, Ch. 303.
[12] Laws 1919.

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South Dakota,[13] Tennessee,[14] Utah,[15] Washington,[16] Wisconsin,[17] and Wyoming.[18] The provisions of these laws are substantially identical. They provide for the creation of a board with authority to administer the land settlement fund; establish a fund either by appropriation or a bond issue; provide for coöperation with the United States government; the loaning of money at low rates of interest, long terms and small annual payments to soldiers and other persons who are eligible to avail themselves of the provisions of the act; and afford in some cases instruction in the science of agriculture and provide employment for soldiers. The Washington soldiers' settlement act, giving soldiers a preference in the right to purchase lands, was upheld in State v. Clausen (110 Wash. 525) as not in violation of the equal privileges and immunities clause of the constitution.

Educational Bonus. The educational bonus is designed to assist students in the completion of their education and is usually granted in lieu of a cash bonus. There are 13 states which have made provision by law for an educational bonus, including California,[19] Colorado,[20] Illinois,[21] Iowa,[22] Kentucky,[23] Minnesota,[24] New York,[25] North Dakota,[26] Ohio,[27] Oregon,[28] South Carolina,[29] Washington and Wisconsin.[30] Six of these (California, Colorado, Oregon, South Carolina, Washington and Wisconsin) provide both for land settlement and educational bonus.

[13] Laws 1919, Ch. 315; Laws 1921, Ch. 325.
[14] Laws 1919, Ch. 140.
[15] Laws 1919, Ch. 74; Laws 1921, Ch. 75; Laws 1919, Ch. 106; Laws 1921, Ch. 76.
[16] Laws 1919, Ch. 188; Laws 1921, Ch. 90.
[17] Laws 1919, Ch. 596.
[18] Laws 1919, Ch. 143.
[19] Laws 1921, Ch. 579. Question of a bond issue is to be submitted to the people in Nov. 1922. (Ch. 578).
[20] Laws 1919, Ch. 23.
[21] Laws 1919, p. 922.
[22] Laws 1919, Ch. 160.
[23] Laws 1920, Ch. 67.
[24] Laws 1919, Ch. 338; Laws 1921, Ch. 214.
[25] Laws 1919, Ch. 606; Laws 1920, Ch. 893.
[26] Laws 1919.
[27] Laws 1921, p. 356.
[28] Laws 1919, Ch. 428; Laws Special Session 1920, Ch. 56 and 12; Laws 1921, Ch. 201, Sec. 8.
[29] Laws 1920, p. 973.
[30] Laws 1919, Special Session, Ch. 5; Laws 1921, Ch. 394 and 327.

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In an act of 1921, California has provided for the creation of the veterans' educational institution, which is in charge of a veterans' welfare board and is to be operated for the benefit of World War veterans. The board is authorized to pay the transportation of students to and from the institution, tuition, fees, books and supplies. A monthly allowance of $40, or not to exceed $1,000 for each student, is made. Out of an aggregate appropriation of $200,000, Colorado provides for loans of not to exceed $200 to students to complete their education. Illinois grants free scholarships to any of the state institutions; Iowa lengthens the term of attendance at school and provides free tuition; Kentucky grants expenses at the state schools, including tuition, fees, room rent, fuel, light and traveling expenses; Minnesota affords funds for expenses not exceeding $200; New York established 450 scholarships which pay a stipend of $100 for tuition and $100 for maintenance; North Dakota grants $25 for each month of service, which may be applied in obtaining an education or purchasing a home; Ohio remits all tuition and matriculation fees at state schools; Oregon pays $25 per month or not to exceed $200 per year for four school years; South Carolina and Washington remit all tuition at state schools; and in lieu of the cash bonus, Wisconsin pays $30 per month or not to exceed $1080 to any student.

Disability Bonus. Nebraska has authorized the board of educational lands and funds to purchase $2,000,000 worth of securities and administer the income derived therefrom in the purchase of food, wearing apparel, medical or surgical aid, care or relief of soldiers.[31] In Iowa, all funds remaining after the bonus is paid is used as a disability fund; and in Wisconsin the service recognition board may pay any soldier $30 per month as a disability pension.[32] Vermont has extended state aid to World War veterans the same as soldiers of former wars.[33]

CHARLES KETTLEBOROUGH.
Indiana Legislative Reference Bureau.

1921 Legislation Respecting Elections. Changes in general election laws in the various states in 1921 were numerous, but with a few exceptions (as with respect to absent voting, corrupt practices, and voting machines) not of great significance. Two states, Missouri (*Laws*, 1921, pp. 315, 330) and New Jersey (*Laws*, 1921, ch. 196, pp.

[31] Laws 1919–21, Ch. 40.
[32] Laws 1919, Ch. 457.
[33] Laws 1919, p. 178.

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516 ff.) completely revised their election laws, the latter chiefly for the purpose of correcting the previous enactments, and the former thoroughly revising the laws dealing with elections in cities of over 100,000 population and counties of over 150,000.

Individual enactments of more than usual importance include the adoption by South Dakota of nonpartisan elections for judges of the supreme, circuit and county courts (*Laws*, 1921, ch. 224, p. 331); and the abolition by the state of New York of the office of state superintendent of elections and the transfer of the function of investigating offenses against the election laws to the local boards of elections (*Laws*, 1921, ch. 555, p. 1683).

Qualifications for voting have been changed in Nebraska and New York. In Nebraska only citizens of the United States are now permitted to vote (*Laws*, 1921, ch. 92, p. 324). New York, by referendum, has added to its other qualifications for voting the ability to read and write English. As opposed to this development in New York, it should be noted that New Jersey, by a change in its law (*Laws*, 1921, ch. 196, p. 568) provides assistance in marking their ballots for persons who cannot read English.

In Tennessee the so-called "Dortch Act" of 1890, a general ballot law heretofore applying to cities and counties of certain size, has been made applicable to all counties, cities, towns and civil districts of the state without regard to population (*Laws*, 1921, ch. 117, p. 289). The effect of the passage of this law is to provide for the Australian ballot in all elections in the state of Tennessee.

Maine (*Laws*, 1921, ch. 70, p. 72) has given the towns of the state the option of adopting the Australian ballot for the election of town officers. Heretofore the Australian ballot has been in use in Maine in national, state, county and city elections. The towns, however, continued the time-honored practice of electing the town officers at the town meetings in the manner usual to parliamentary bodies—by ballot, as the election of each officer was reached in its order in the proceedings. The purpose of the new law is to save time in the election of town officers, a matter of imperative necessity with the increase in population of many towns and the doubling of the suffrage in all of them. A practical result may be that the town meeting will lose much of its importance.

A new law in California (*Laws*, 1921, ch. 651, p. 1098) provides for the adoption by any city, county, or "city and county" of a method of counting the ballots which has been in use in San Francisco for several

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years. By the method of "central count," as it is called, the ballots, instead of being counted in the precincts and the returns made to a county officer, are sealed in the ballot boxes in the precincts and brought to a public building centrally located. There the ballots from all the precincts are counted publicly in a large room under the direction of the officers having charge of the election. The experience in San Francisco indicates that the advantages of this method of counting are that it saves time and expense, and in addition makes it easier to prevent fraud. It would seem, however, to be particularly useful only for cities or for counties small in area and densely populated.

California (*Laws*, 1921, ch. 525, p. 828), Colorado (*Laws*, 1921, ch. 117, p. 295) and Rhode Island (Pub. *Laws* 1921, January session, ch. 2029, p. 49) have repealed their laws authorizing the use of voting machines in public elections. On the other hand, New York makes the use of voting machines obligatory in cities of the first class (*Laws*, 1921, ch. 391, p. 1228). It is provided that machines must have been installed in twelve per cent of the polling places in the cities affected in time for the general election of 1921, in thirty-five per cent of the polling places by 1922, and by 1923 they must be in use in all polling places. If the proper local authorities fail to make provision for the use of voting machines, the secretary of state may take the necessary action.

Arkansas has changed the time for holding general elections for state, county and township officers, whose terms are set by the state constitution at two years, from the second Monday in September to the next Tuesday after the first Monday in October in the even numbered years (*Laws*, 1921, ch. 81, p. 74).

New Jersey assists in promoting party solidarity by making it possible to vote with one mark for all the candidates of one party for presidential electors (*Laws*, 1921, ch. 196, p. 559).

A number of states have made changes of no great significance, for example, increasing the number of election officers at general elections when the number of voters is increased, a provision no doubt made necessary by the adoption of woman suffrage (California, Iowa, Kansas, Nebraska, Oregon); providing penalties for false certification by election officers (Colorado); providing that a voter moving from his precinct within thirty days of election shall not lose his vote (South Dakota); assisting blind and otherwise disabled voters (New Jersey, New Mexico); prohibiting electioneering within one hundred feet of the polls (New Jersey).

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Absent Voting. Arizona (*Laws*, 1921, ch. 117, p. 253), Nevada (*Laws*, 1921, ch. 90, p. 153) and West Virginia (*Laws*, 1921, ch. 55, p. 158) have passed new absent voting laws, and Nebraska (*Laws*, 1921, ch. 94, p. 350), Texas (*Laws*, 1921, ch. 113, p. 218) Vermont (*Laws*, 1921, act no. 4) and Washington (*Laws* 1921, ch. 143, p. 529) have made important changes in the existing laws on this subject. The Arizona and Nevada laws, which are much alike, provide that a voter expecting to be absent from the county in which he lives on the day of any election may, upon application to the appropriate county officer, receive by mail or in person an absent voter ballot. He may then, in the presence either of the county officer or of some person authorized to administer oaths, mark the ballot and hand or mail it to the county officer, by whom it is transmitted to the precinct in which the voter lives. The ballot is canvassed just as any other ballot cast in the precinct. Both of these statutes provide adequate protection for the honesty and secrecy of the vote. The penalty for violation of the Arizona act is rather light—fine not to exceed $100, or imprisonment not to exceed thirty days, or both. On the other hand, the penalty for violation of the Nevada statute is imprisonment in the penitentiary for a term not less than one year and not to exceed five years.

The West Virginia statute is similar to that passed in Arizona and Nevada, except that it applies only to voters who expect to be absent from the state on election day. The changes in the Nebraska and Washington laws permit the voter who expects to be absent from the county where he resides on election day to vote by mail for all offices for which the election is held, including county and other local officers. Previously the laws in these states permitted the absent voter to vote on state offices only. The Texas law, which is very badly drawn, applies only to primary elections, and the amendment adopted in 1921 is to provide two methods of voting, one in person and the other by mail. The change in the Vermont law concerns the time within which application for absent voter's ballot must be made.

It appears from an examination of the changes in absent voting laws that the tendency is to provide means by which an elector absent from his voting precinct can have as full and complete privileges as if he were present. Earlier laws on this subject permitted the voter to cast his ballot at any place in the state where he happened to be on election day, and in several states this limited him to voting only for state officers. The later laws afford the privilege to the voter to participate also in the elections of county, town and city officers. That is why

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there must be provided special ballots for absent voters, and methods for issuing them and for insuring that they will be voted under some public auspices and transmitted to the proper precincts protected from dishonesty and without violating the voters' confidence.

Corrupt Practices. Arizona (*Laws*, 1921, ch. 172, p. 428), California (*Laws*, 1921, ch. 583, p. 983), Iowa (*Laws*, 1921, ch. 197, p. 206), Kansas (*Laws*, 1921, ch. 184, p. 277), New Jersey (*Laws*, 1921, ch. 196, p. 595), South Dakota (*Laws*, 1921, ch. 227, p. 335), and Wisconsin (*Laws*, 1921, ch. 161) have made changes in their corrupt practices laws. In Arizona by the former law, candidates for various offices in primary elections were limited in their campaign expenditures to a certain maximum for all purposes. The new provision is for the same maximum expenditures, but is exclusive of payment for stationery, postage, printing, and advertising in newspapers and moving picture shows.

The California law extends the corrupt practices regulations to referendum elections as well as to campaigns for office. Every person, committee, firm, association, or public or private corporation which spends money for the purpose of securing the enactment or defeat of any referendum measure is obliged to file a statement of contributions and expenditures for campaign purposes within twenty days after the election, and these are to be made public. Violation of the act is punishable by a fine of $1000, one-half of which goes to the treasury of the county in which the indictment is brought and one-half to the person lodging the information. Violation is also subject to a civil suit by any citizen for the recovery of an additional penalty of $1000.

A previous Iowa law provided that a statement of expenditures should be filed by candidates ten days after election. The new amendment provides that if a candidate receives any additional sums after the election he must file a sworn statement within thirty days after receipt. It is also provided now that a candidate may not spend in excess of fifty per cent of the annual salary of the office to which he aspires in the primary campaign nor more than fifty per cent in the campaign for subsequent election.

The Kansas act extends the time of filing statements of expenditure from ten days after election, as provided in the 1915 law, to thirty days.

The most significant change in the New Jersey law is the increase in the amounts which may be spent in aid of candidates for state offices as follows: for governor or United States senator, $50,000 in the primary campaign and $50,000 in the election campaign, instead of $25,000 in each as heretofore; for the House of Representatives, $7500

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in each campaign instead of $3,500 as heretofore; for state senator ten cents for each voter in each campaign instead of five cents; for election as a delegate to a national convention, $10,000 instead of $5000 as formerly; for state committees, $500 instead of $100; for county or municipal committees, $50 instead of $25. On the other hand, for county offices without fixed salary five cents for each voter may now be spent instead of ten cents as heretofore.

The South Dakota law prohibits the publication of paid advertising matter in newspapers or other periodicals, for the purpose of influencing voters at an election, unless headed "paid advertising" and accompanied by the name and address of the candidate benefitted, of the person authorizing the publication, and of the author.

The Wisconsin act provides that if a candidate receives nothing or spends nothing in his campaign, he shall file a statement to that effect.[1]

VICTOR J. WEST.

Stanford University.

Party Affiliation Tests in Primary Election Laws. A comparison of party affiliation provisions of state laws effective in 1920 and those in force in 1908 points to two interesting conclusions regarding the general trend of legislative attitude toward the primary election.

The figures of the accompanying table indicate that during that period, there was a growing desire for official definition and administration of the tests of an elector's eligibility to participate in party primary elections. During these twelve years, seven state legislatures deprived the political parties of the sole authority to designate who should, and who should not, participate in their nominating elections. As a result of this change, six of the states involved adopted an official definition of the test, while the seventh was content to share the authority with the political parties.

[1] The legislatures of Alabama, Kentucky, Louisiana, Maryland, Mississippi and Virginia were not in session in 1921. No laws of any significance with respect to the subjects covered in these notes were passed by the legislatures of Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, Utah and Wyoming.

In the preparation of these notes the author has had the assistance of Professor R. C. Brooks of Swarthmore College, Professor Clarence W. Peabody of the University of Maine, Miss Amelia L. Hedges of Stanford University, Mr. Miller McClintock of Harvard University, Mr. Rodney L. Mott, of the University of Wisconsin, and Miss Louise Overacker of Vassar College.

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The favor in which the official test is held is shown by the fact that of the primary laws in force in 1920, thirty-one provide that the entire test shall be defined by the legislature. In six states the legislature prescribes part of the test and permits the party holding the primary to specify additional qualifications. In only seven states are the political parties given unrestricted jurisdiction.

Regulations for administering the tests likewise show evidence of a trend toward increased official control. During the period indicated the political parties of six states lost the power to require enrollment under party supervision as a prerequisite for participation in the primary election. Perhaps the most striking indication of the general trend is to be noted in the figures regarding registration. Between 1908 and 1920 fifteen additional states adopted some form of official registration.

A second conclusion which may be drawn from the comparison is that while the legislatures were assuming a greater share in defining and administering tests of party affiliation, they were at the same time more effectively protecting party organization. The comparison shows that on the whole the primary election is becoming more strictly a closed primary.

This conclusion is substantiated by the figures regarding registration, which show a material increase in the number of states requiring an official registration of party affiliation as a basis for participation in the party primary. As a result of this change, increased difficulties were placed in the way of the elector who wished to change his party affiliation. Under the official registration provisions in twenty-six states the political party is comparatively safe from invasion at the primary.

This same tendency toward greater protection to party integrity is shown, though somewhat less significantly, by the figures indicating changes in the types of tests required. The single test of present affiliation, which offers a minimum of protection to the party organization lost four supporters, while the similarly unprotective test of future intention lost two. The relatively high protective test of past allegiance retained the same number of supporters. There was, however, a significant shift toward what may be called complex declarations, usually requiring a statement of affiliation upon two or more grounds, though occasionally permitting alternatives. Six states participated in the change to the complex declaration.

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CHANGES IN PARTY AFFILIATION PROVISION OF STATE PRIMARY ELECTION LAWS

	1908*	1920†
I. Open Primary	4	3
II. Closed Primary		
A. Authority prescribing test		
1. The political party	14	7
2. The legislature	25	31
3. Party and legislature	5	6
B. The voter's declaration		
1. Past allegiance only	5	5
2. Present affiliation only	17	13
3. Future intention only	4	2
4. Past action and (or) present affiliation	1	6
5. Past action and (or) future intention	3	3
6. Present affiliation and (or) future intention	5	8
7. Past action and (or) present affiliation, and (or) future intention	4	2
C. Record of declaration		
1. Declaration at primary—no preserved record	15	12
2. Enrollment under party supervision	7	1
3. Official registration	11	26

* Summary in Schaffner, *Primary Elections* (University of Wisconsin, 1908), and laws in effect.

† From a survey of primary election laws effective in 1920.

In summary then, the comparison shows increase in the number of states officially defining and administering tests of party affiliation, and at the same time additional provisions for protection of party organization.

MILLER MCCLINTOCK.

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JUDICIAL DECISIONS ON PUBLIC LAW

ROBERT E. CUSHMAN

University of Minnesota

Administrative Law—Uncontrolled Discretion of Administrative Officer —Freedom of Speech. State v. Coleman (Connecticut, Supreme Court of Errors, April 27, 1921, 113 Atl. 385). The charter of the city of Meriden, Connecticut, gives authority to the council to make ordinances for the proper use and regulation of public highways and places. In pursuance of this authority an ordinance was enacted providing that no person shall use the streets, sidewalks, parks, or public squares for the purpose of delivering orations, speeches, or other public demonstrations, without first obtaining a permit from the chief of police. The ordinance contained nothing to serve the chief of police as a guide in the exercise of the discretion thus conferred upon him. This ordinance was held to be unconstitutional, Section 5 of the bill of rights of the constitution of Connecticut declares that "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty." This clause clearly recognizes a qualified right inhering in the citizens. That qualified right is violated by conferring upon an administrative officer the personal and arbitrary power to say who may exercise it and who may not. The fact that the chief of police in question may exercise his discretion fairly or the fact that the defendant may have been about to abuse his qualified right of free speech are both wholly irrelevant matters. A right which exists only as the result of an act of grace upon the part of an administrative officer is not a right at all. The case is clearly in line with the weight of authority.

Aliens—State Constitutional Guaranties of Free Speech, Press, Assembly and Petition Confined to Citizens. State v. Sinchuk (Connecticut, Supreme Court of Errors, August 14, 1921, 115—Atl. 33). In 1919 the legislature of Connecticut enacted a sedition law forbidding disloyal or scurrilous utterances against the United States, its form of government, flag, etc. The defendants, who were aliens, upon con-

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viction under this statute attacked its constitutionality under several provisions of the bill of rights of the state constitution. The court did not enter upon a consideration of the validity of the law, but took the position that since the defendants were aliens they were not entitled to the protection of the constitutional clauses invoked and could not, therefore, attack the statute as a violation of their constitutional rights. The defendants had relied upon four clauses of the bill of rights of the constitution of Connecticut. The first of these declares that "All political power is inherent in the people. . . . they have at all times an indefeasible right to alter their form of government in such a manner as they think expedient." The court declared that the "people" referred to in this provision clearly cannot include aliens who have no political power at all. The next two guaranties relied upon were respectively: "The citizens have a right peacably to assemble and petition the government," and "Every citizen may freely speak, write and publish his sentiments . . . . " The court held that these clauses by their own words were confined in their application to citizens. A more difficult problem was presented by the fourth provision of the bill of rights pleaded by the defendants which declared that "No law shall ever be passed to curtail or restrain the liberty of speech or of the press." This is quite obviously not limited by its terms to citizens but seems to state a general restriction upon legislative power. The court, however, took the position that by its proximity to the clauses before quoted it must be inferred that this clause was intended for the protection of citizens only and not aliens. In support of this conclusion the court relied upon an early case (Jackson v. Bulloch, 12 Conn. 38) in which it had been held that the general guaranty in respect to the writ of habeas corpus in the Connecticut bill of rights did not apply to slaves. In that case it had been said: "The language seems evidently limited to those who are parties to the social compact thus formed. Slaves cannot be said to be parties to that compact, or to be represented in it." The inference from the present case would seem to be that aliens, not being parties to the "social compact," are outside the protection of the provisions of the bill of rights of the constitution of Connecticut unless by the words of those provisions they are unmistakably included.

Civil Service Promotions—Preference for Soldiers and Sailors. Barthelmess v. Cukor (New York, Court of Appeals, July 14, 1921, 132 N.E. 140). It is provided by the New York constitution that "appointments

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and promotions in the Civil Service shall be made according to merit and fitness to be ascertained, so far as practicable, by competitive examination, provided that honorably discharged soldiers and sailors from the army and navy in the late civil war shall be entitled to preference in appointment and promotion without regard to their standing on any list." By a statute passed in 1920 it was provided that preference in respect to promotion in the civil service should be given to soldiers and sailors of the World War who take the examination for promotion while in the military or naval service or who, having taken the examinations, enter such service. The act was repealed within a short time but the repeal was to take effect without affecting rights which had been created by it. The statute creating the preference was held to be unconstitutional. The authorization of a preference in civil service for civil war veterans made it plain that the legislature had no authority without specific constitutional authorization to extend a similar preference to any other group of soldiers and sailors. We have here a case of what has been called a "resulting limitation," in which a specific grant of power to the legislature to do a particular thing operates as a prohibition upon doing a different but very similar thing. The court also finds that the effect of the preference statute coupled with the repeal would result in arbitrary discrimination by establishing a very small class of civil service employees who would enjoy special privileges which would be henceforward denied to others in like circumstances.

Declaratory Judgments—The Nature of Judicial Power. State v. Grove (Kansas, October 8, 1921, 201 Pac. 82). A statute enacted by the legislature of Kansas authorized the courts to issue declaratory judgments in cases where no consequential relief was sought by the parties. The question of the constitutionality of this act is raised in this case and the act is held to be valid. The chief ground of attack against this type of legislation is that it involves a legislative imposition of non-judicial duties upon the courts which constitutes a violation of the doctrine of the separation of powers. This was the basis of the decision of the supreme court of Michigan invalidating a declaratory judgment act. See Anway v. Grand Rapids Ry. Co., 179 N. W. 350 (1920). The supreme court of Kansas indulges in a somewhat elaborate discussion of the Michigan case, but finds itself unable to accept the premise upon which the line of reasoning just outlined rests, namely, that a declaratory judgment act actually confers upon the courts the duty of exercising a non-judicial function. This view of the matter it

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holds to be erroneous. It arises from a confusion of the declaratory judgment with the advisory opinion, which the Kansas tribunal holds to be entirely different in nature. In rendering an advisory opinion the court does actually perform a non-judicial function since there are no parties litigant and no actual case or controversy presented to the court. In the case of a declaratory judgment, however, there is an actual judgment rendered respecting the rights of actual parties litigant, even though there may be no consequential relief sought. This decision would seem to harmonize with the weight of professional opinion upon this question.

Delegation of Legislative Power—Incorporation into State Law of Act of Congress. In re Opinion of the Justices (Massachusetts, November 22, 1921, 133 N.E. 453). A bill for the enforcement of the Eighteenth Amendment was submitted to the supreme court of Massachusetts by the legislature with a request for an opinion as to its validity. The bill incorporated in its provisions various acts of Congress, either acts already in force or acts which might in the future be passed. Such incorporation of congressional statutes was held by the court to be an unconstitutional delegation of legislative power inasmuch as an integral part of the legislative policy of the state is, by this process, to be determined not by the state legislature but by the national legislature. When the Eighteenth Amendment authorizes the exercise of concurrent legislative power by state and nation for its enforcement it does not contemplate the enactment of laws in any new way. It intends merely that both governments shall be empowered to legislate according to their accustomed methods. The court points out, however, that there could be no constitutional objection to the enactment by the state legislature of laws couched in the same words, or employing the same standards or tests as may be found in acts of Congress.

The court concludes its opinion with a protest against the legislative policy of submitting to the court a long and intricate piece of legislation with the request that the court scrutinize it for constitutional defects and then discuss those defects. Requests for advance or advisory opinions ought to come in the form of questions upon specific points definitely raised.

Equal Protection of the Law—Validity of Poll Tax Imposed Exclusively Upon Aliens. Ex parte Kotta (California, September 12, 1921, 200 Pac. 957). By an act of 1921 a poll tax was imposed upon aliens

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in the state of California but not upon citizens. The act was defended upon the ground that it provided the revenue necessary for the administration of the laws requiring registration of aliens and subjecting them to other regulatory provisions. The court, however, declared the statute to be unconstitutional as denying the equal protection of the law. It emphasized in its opinion the familiar principle that the equal protection of the law clause of the Fourteenth Amendment includes within its protection not merely citizens but "persons" and may, therefore be successfully invoked by aliens who have been subjected to arbitrary discrimination by the state.

Industrial Disputes—Prohibition against Strikes and Lockouts in Businesses Affected with a Public Interest. People v. United Mine Workers of America (Colorado, April 4, 1921, 201 Pac. 54). This case raised the question of the constitutionality of the Colorado Industrial Disputes Act of 1915. This statute provided for a system of dealing with industrial disputes commonly known as compulsory investigation. By its provisions a commission or board was created for the purpose of investigating and reporting upon the merits of disputes between capital and labor in the hope of facilitating the peaceful adjustment of differences. To this end all lockouts and strikes were forbidden prior to or during such an investigation by the state commission. The act applied only to industries which are affected with a public interest. In the present case the question was raised concretely whether the coal mining industry was affected with a public interest so that a strike in that industry would fall within the prohibitions of the act, and whether the state by its police power could forbid a strike in accordance with the provisions of the statute. The court held that coal mining is a business affected with a public interest. It held this to be true largely by reason of the vital importance of coal in the scheme of modern life. "We must take judicial notice," said the court, "of what has taken place in this and other states, and that the coal industry is vitally related not only to all other industries, but to the health and even the life of the people. Food, shelter, and heat before all others, are the great necessities of life, and in modern life, heat means coal." This is a line of reasoning which raises the query whether the courts may not yet come to the point of defining businesses affected with a public interest in simple terms of human necessity. The court then repudiated the argument that the anti-strike feature of the statute was a violation of the Thirteenth Amendment, pointing out that the individual workman

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was not forbidden to quit his work for any reason or for no reason, and emphasizing that it is only the collective activity involved in a strike which is under the ban. The act does not, therefore, impose involuntary servitude. Nor does the provision forbidding incitements to strike violate the guaranties of free speech, since the police power of the state extends to the prohibition of incitement to do a thing which itself may be made unlawful.

Jurors—Qualifications—Effect of Nineteenth Amendment upon Eligibility of Women. State v. James (New Jersey, Court of Errors and Appeals, June 20, 1921, 114 Atl. 553); Commonwealth v. Maxwell (Pennsylvania, July 1, 1921, 114 Atl. 825). In the New Jersey case the defendant was convicted of first degree murder after the ratification of the Nineteenth Amendment but before the enactment of a statute making women eligible to serve on petit juries. The jury which convicted him had been chosen from a panel of five hundred persons none of whom were women. The defendant alleged that this procedure constituted a violation of the clause in the state constitution guaranteeing trial by an impartial jury. The court rejected this contention. It held that the constitutional clause in question guaranteed a trial by the jury known to the common law, quite obviously one from which women were excluded. Furthermore, the Nineteenth Amendment while it enfranchised women did not have any affect upon the qualifications of petit jurors since those qualifications are determined by the legislature of the state. And even if the statute subsequently enacted which permitted women to serve as jurors had been in force at the time of the defendant's trial it would not have had the result of requiring the presence of any women upon the jury. It would merely have required that women should not be excluded from the jury merely because of sex.

In the Pennsylvania case a different result was reached by reason of different statutory provisions. By an act passed in 1867 the jury commissioners in Pennsylvania were instructed to choose jurors from the whole body of qualified electors of the state. The court held that the Nineteenth Amendment by adding women to the body of qualified electors made them eligible to jury duty under the provisions of this statute without further legislative enactment.

Privileges and Immunities of Citizens in the Several States—Grazing Privileges Upon Public Lands. Hostetler v. Harris (Nevada, November 30, 1921, 197 Pac. 697). A Nevada statute forbade any person not

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having his principal ranch in Nevada to graze cattle upon any unenclosed land in the state without first securing a license from the county sheriff after the payment of a substantial fee. The act provided a penalty for its violation, of not less than $1000 nor more than $10,000. The plaintiff paid under protest fees amounting to $925 and brings action in this case to recover that amount. The court held that the statute was invalid as a violation of Art. IV, Sec. 2, of the Constitution of the United States which provides that "The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States."

Police Power—Equal Protection of the Law—Regulation of Rents in Large Cities. State v. Railroad Commission (Wisconsin, July 10, 1921, 183 N.W. 687). By an act passed in 1920 an emergency arising out of the World War was declared to exist in respect to housing conditions and the charging of unjust and unreasonable rents was made unlawful. This law was made applicable only in counties with a population of 250,000 and over. The administration of it was placed in the hands of the state railroad commission. The statute was attacked in this case on the grounds of a denial of due process of law and the equal protection of the law. The court alluded to the decisions in which the New York Housing Law had been sustained as a proper exercise of the police power (People v. La Fetra, 130 N.E. 601; Brown Holding Co. v. Feldman 65 L. Ed. Sup. Ct. 539) but refrained from considering the Wisconsin statute upon this basis. It held, however, that the law did deny the equal protection of the law, inasmuch as it imposed upon the owners of property in populous counties restrictions from which property owners throughout the state generally were free. Such discrimination was held to be arbitrary in view of the fact, of which the court declared itself willing to take judicial notice, that housing conditions were acute throughout the state and not merely in the largest city of the state. The statute was declared to be unconstitutional on this ground.

Police Power—Regulation of Qualifications for Practice of Medicine—Chiropractors and Osteopaths. People v. Love (Illinois, June 22, 1921, 131 N.E. 809); Williams v. Scudder (Ohio, April 26, 1921, 131 N.E. 481). The Illinois case involved the question of the validity of the Medical Practice Act of 1917. By the provisions of that act the minimum standards of professional education for the practice of medicine or surgery were defined in terms of graduation from a medical school of

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good standing. The same act provided that "for the practise of any system or method of treating human ailments without the use of drugs or medicine or operative surgery" the candidate must "be a graduate of a school or institution which requires as a prerequisite for graduation four years of instruction." The plaintiff in error was a chiropractor who had graduated from a two year course. It was brought out in argument before the court that there is no school of chiropractic in the country which requires four years instruction for graduation, so that the operation of the statute would be to bar all chiropractors from practice in the state of Illinois. The court held the statute to be invalid as an arbitrary and unreasonable exercise of the police power amounting to a denial of due process of law and the equal protection of the law. The court announced its willingness to take judicial notice of the value of chiropractic and osteopathy the practitioners of which could by no means be classed with charlatans. This being the case the court declared that the effect of the statute was to discriminate against one branch of the medical profession inasmuch as physicians and surgeons could be admitted to practice under the provisions of the act after graduation from a school requiring only two or three years instruction provided such school was approved by the state medical board.

In the Ohio case the adherents of chiropractic fared much less satisfactorily than in the Illinois decision. The case arose out of an application for an injunction to prevent the enforcement of the Medical Practise Act of 1915. This act outlines certain preliminary training to be required before candidates start upon the study of medicine or surgery. This preliminary training may be said to amount at least to the equivalent of a four year high school course or college entrance requirements. The statute further provides that chiropractic, osteopathy, magnetic healing, etc., shall also be subject to regulation, that the state medical board shall determine the standing of schools, that a certificate or diploma from such certified school shall be required for practice, and that the board "may adopt rules defining preliminary educational training which is less exacting" than is required for the practice of medicine or surgery. The state medical board, however, in spite of this last authorization, had refused to recognize and certify schools of chiropractic or other similar art which had less rigid preliminary requirements than those specified in the statute above mentioned. The result was that chiropractors in general were not permitted to take the examination for admission to practise since they ordinarily lacked this

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preliminary educational training. The court held the statute to be constitutional. It noted the growing tendency to establish increasingly higher qualifications for those who enter the learned professions and held that the statute in question was free from discriminatory features and was a proper exercise of the police power of the state. The state medical board was not required to sanction more lax requirements for chiropractors, osteopaths, etc., than for regular practitioners of medicine and surgery, it was merely permitted to do so. Its refusal to do so was not a violation of the constitutional rights of any one and was justified in any case by the refusal of the schools of chiropractic to allow the board to examine into their courses of study and methods.

Soldiers' Bonus—Extension of the Credit of State for Improper Purpose. People v. Westchester County National Bank (New York, Court of Appeals, August 31, 1921, 132 N.E. 241). This case raises squarely the question of the validity of the New York Soldiers' Bonus Act of 1920. That act provided for the issuance of bonds to the amount of $45,000,000 from the proceeds of which bonuses were to be paid to any persons in the military or naval forces who had rendered service for at least two months in the late war. It is interesting to note that the act, when submitted to a state-wide referendum, had been approved by a vote of 1,454,940 to 673,292. The New York court of appeals held the act to be unconstitutional. The court emphasized at the outset the fact that the bonus provided for is not for the benefit exclusively or even primarily of those who were disabled in military or naval service. Loans contracted by the state for the benefit of wounded soldiers would stand upon an entirely different constitutional basis from the payments contemplated by this statute, under which "he who occupied a perfectly safe but highly useful desk in a department, stands on a level . . . . with that other who comes back to us shattered in mind or body by reason of more perilous service." The court admitted that the bonus provided for was for the public welfare and constituted a public purpose for which taxes might be constitutionally levied. It based its decision upon the limitations found in the constitution of New York upon the loaning or giving of the state's credit. These limitations are found in two places in the constitution. Art. 7, Sec. 1 declares that the "credit of the state shall not in any manner be given or loaned to or in aid of any individual." Art. 8, Sec. 9 provides that "neither the credit nor the money of the state shall be given or loaned to or in aid of . . . . any private undertaking." The court held that these clauses imposed

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restrictions upon the use of the state's credit more rigorous in character than the ordinary test of public use applicable to the taxing power. They forbid the use of money raised by state loans for the making of any sort of gift no matter how worthy the recipient of the gift may be. It was vigorously urged upon the court that the bonus payments were not gifts within the sense of the constitutional provisions quoted but should be regarded as payments made in recognition of a moral obligation resting upon the state. This view the court rejected. It took the position that while the services of the war veterans were appreciated by the state they had been rendered not to the state but to the nation and that any accruing obligation rested accordingly, not upon the state but upon the nation. The bonus must be looked upon, therefore, as a sheer gift and so within the prohibition of the constitution. A vigorous dissent was filed based upon the doctrine that the bonus ought to be regarded as a requital for services rendered rather than a gift.

Suffrage—Tax-paying Qualification Upon Right to Vote in Municipal Elections Upon Proprietary Questions. Carville v. McBride (Nevada, January 5, 1922, 202 Pac. 802). The constitution of the state of Nevada provides that all citizens of the United States who have reached the age of twenty-one years, who are not otherwise disqualified, and who have resided in the state six months and in the district or county thirty days next preceding any election, shall be entitled to vote for all officers and upon all questions submitted to the electors at such elections. In the charter of the city of Elko, enacted by special act of the legislature in 1917, the right to vote in any municipal election upon the issuance of bonds or the granting of franchises was limited to tax-payers. In this case the plaintiff contested the validity of an election held upon the question of a bond-issue in which only tax-payers had been allowed to vote. He alleged that such a limitation upon the suffrage of persons otherwise qualified was a plain violation of the constitutional provisions summarized above. The court held the charter provision in question to be constitutional. It commented at some length upon the well recognized distinction between the governmental and proprietary functions of municipalities and the fact that cities enjoy greater freedom from restriction in respect to activities which are proprietary in character. It then concluded that the constitutional clause, declaring that duly qualified citizens should be entitled to vote "for all officers and upon all questions submitted to the electors at such elections," should be con-

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strued to refer merely to officers and questions which are governmental in character and not those which are proprietary in character. It is interesting that the court should have chosen to support its decision by this somewhat novel line of reasoning rather than by the much more common doctrine that suffrage qualifications in state constitutions apply only to officers and elections mentioned in the constitution itself and not those of statutory origin, or the doctrine that the wide scope of legislative authority over municipalities includes the power to regulate the suffrage qualifications in municipal elections.

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NEWS AND NOTES

Personal and Miscellaneous

EDITED BY FREDERIC A. OGG

University of Wisconsin

By vote of the Executive Council, the American Political Science Association will hold its next annual meeting at Chicago on December 27–29. The headquarters will be at the Congress Hotel, where the American Economic Association will also be in session. The committee on program consists of Professor R. T. Crane, University of Michigan, chairman; Professor R. G. Gettell, of Amherst College; and Professor C. G. Fenwick, of Bryn Mawr College.

Dr. David P. Barrows has resigned the presidency of the University of California, though it is understood that he will continue to discharge the duties of the office for another year.

Professor John C. Dunning, of Brown University, will be on sabbatical leave during the next collegiate year. He expects to devote his time chiefly to study in France. Mr. Leland M. Goodrich will have charge of his classes during his absence.

Mr. George B. Noble, assistant professor of political science at the University of Nebraska during the past two years, has accepted a similar position at Reed College.

Miss Luella F. Gettys, instructor in political science at the University of Nebraska, has been awarded the Susan B. Anthony research scholarship in politics for the year 1922–23 by Bryn Mawr College.

Dr. Frederick A. Middlebush, of Knox College, has been appointed associate professor of political science and public law in the University of Missouri. He gave courses during the summer at the University of Colorado.

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Professor Herman G. James, of the University of Texas, has been appointed by the Carnegie Institution of Washington to make a study of the governmental system of Brazil. He went to Brazil in June and expects to spend about seven months in the country.

Dr. Malbone W. Graham, Jr., instructor in political science in the University of Missouri, has been appointed to a similar position in the University of Texas.

Mr. Irwin Stewart, graduate student at the University of Texas, and Mr. Ben Wright, a graduate student at Harvard University, have been appointed instructors in political science in the University of Texas.

Professor N. H. Debel, of Goucher College, gave two courses in American government in the summer session of the Johns Hopkins University.

Miss Elizabeth Merritt, who holds a doctor's degree from the Johns Hopkins University, has been appointed instructor in political science in Goucher College.

Professor Harold S. Quigley will continue for another year on leave of absence from the University of Minnesota and will remain in the Far East, teaching at Tsing Hua College at Peking and making a study of Far Eastern governments and politics.

Mr. Forrest R. Black, who supplied at the University of Minnesota last year, has accepted a position at Washington University, Saint Louis.

Mr. Rodney L. Mott, who has just received the doctor's degree at the University of Wisconsin, has been appointed to an instructorship in political science at the University of Minnesota.

The American University (at Washington) has added to its staff of lecturers in political science Ellery C. Stowell, formerly of Columbia University; William R. Manning, formerly of the University of Texas; Blaine F. Moore, formerly of the University of Kansas; Lester H. Woolsey, of the firm of Lansing and Woolsey; and Charles C. Tansill, of the Library of Congress.

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Professor Geddes W. Rutherford, of Grinnell College, gave courses in political science at the summer session of the University of Kansas.

Dr. L. M. Short, of the University of Illinois, has been appointed instructor in political science at the University of Akron. During the summer he has been a member of the staff of the Institute for Government Research at Washington.

Professor K. F. Geiser, of Oberlin College, gave courses on European governments and municipal government in the summer session of the University of California. His courses at Oberlin have been in charge of Mr. Howard L. Hall, of the Harvard Law School.

Mr. Norman L. Hill, instructor in history and government at Denison University, has been appointed to an assistantship in political science at the University of Wisconsin.

In recognition of his services to the Chinese Government in connection with the Washington Conference, the President of the Republic of China has conferred upon Professor W. W. Willoughby, of the Johns Hopkins University, the Insignia of the First Class of the Order of the Chia-Ho with the Grand Cordon. This is the highest decoration conferred by the Chinese Government and has been received by very few foreigners.

Mr. Martin L. Faust, of Western Reserve University, will spend the next year in graduate study at the University of Chicago.

In a debate on the direct primary held at Philadelphia in May before the Pennsylvania State League of Women Voters the affirmative side of the question was taken by Professor Charles E. Merriam, of the University of Chicago, and the negative side by Congressman George S. Graham of Pennsylvania.

Professor John Bassett Moore, of Columbia University, who is a member of the Permanent Court of International Justice at the Hague, has been selected by President Harding and Secretary Hughes to represent the United States on the international commission of jurists to consider the amendment of the rules of war. Mr. Moore is the only American representative selected, although, under the terms of the

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resolution adopted on February 4, 1922, by the Washington Conference two might have been named. The conference resolution provided that the United States, Great Britain, France, Italy, and Japan should select not more than two representatives each to consider the question of revising the rules of international law pertaining to new agencies of warfare. The United States is authorized by the resolution to fix the time and place for the meeting of the commission after consultation with the other powers.

The program of the Tenth Governmental Research Conference held at Cleveland, June 1–3, included sessions devoted to taxation, cost of government, criminal justice, the city manager plan, and the relation of research to universities.

In connection with the inauguration of Dr. R. B. von Kleinschmid as president of the University of Southern California, April 27, an extensive conference was held on Pan-American education, commerce, industry, and international relations. Fifteen foreign countries were represented.

The second conference on training for foreign service was held at Philadelphia on May 9 under the direction of the advisory council and committee of fifteen on educational preparation for foreign service, and in connection with the ninth annual foreign trade convention of the National Foreign Trade Council. The speakers at a session on the study of the social sciences in school and college as educational preparation for foreign service were Professors Philip M. Brown, of Princeton University, Professor W. I. Hull, of Swarthmore College, and Professor James P. Lichtenberger, of the University of Pennsylvania; and at a session on social forces in foreign relations, Professor S. P. Duggan, director of the Institute for International Education, and President W. W. Atwood, of Clark University.

A Pan American Conference, to be held in Santiago in March, 1923, has been authorized by the governing board of the Pan American Union. This Conference, which will probably last from six to eight weeks, will be the fifth that has been called since a union of the American republics was created. The first Conference, which was held in Washington in 1889, was presided over by James G. Blaine, then secretary of state. It was attended by representatives from all of the republics then existing

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in the New World. Among the distinguished members of the American delegation were Andrew Carnegie, Henry Gassoway Davis, and Cornelius N. Bliss. This Conference created the Commercial Bureau of the American Republics, which was later changed to the International Bureau of the American Republics, and in 1910 became the Pan American Union. The second Conference was held in Mexico City in 1901; the third, in Rio de Janeiro, in 1905; and the fourth, in Buenos Aires, in 1910. A fifth meeting, which was to have been held in Chile in 1914, was postponed on account of the outbreak of the World War. The governing board of the Pan American Union, consisting of the diplomatic representatives of the member countries, has the authority not only to select the place of meeting, but to prepare the program to be discussed.

On June 28, the Illinois constitutional convention, which began its sessions in 1920, passed on third reading a proposed revised state constitution. This will be submitted to popular vote at a special election on December 12. Among the important changes in the proposed constitution are those relating to the election of the legislature, consolidation of courts, home rule for Chicago, and income tax provisions.

The Missouri constitutional convention met on May 15. It consists of two delegates from each of the thirty-four senatorial districts and fifteen delegates elected at large. Numerous amendments to the existing constitution have been proposed and referred to appropriate committees. The convention is authorized to submit a revised constitution or separate amendments. It is probable that the latter plan will be followed.

Several years ago an honorary fraternity for the social sciences was organized at the University of Missouri. In October, 1920, the first chapter of an honorary political science fraternity, bearing the name Pi Sigma Alpha, was established at the University of Texas. Other local chapters have been organized at the Universities of Oklahoma and Kansas, in March, 1922, and the first convention was held at the University of Oklahoma on March 24, 1922, participated in by these three chapters.

The Harris political science prizes, awarded to undergraduates in six middle western states for the best essays on topics drawn from a prescribed list, have been bestowed this year as follows: first prize of

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$150 to Mr. Richard H. Eliel, of the University of Chicago, for an essay entitled "Freedom of Speech during and since the Civil War;" second prize of $100 to Mr. Burton Y. Berry, of Indiana University, whose essay was entitled "The Influence of Political Platforms on Legislation in Indiana, 1901–1921;" honorable mention to Miss Marjorie Bonney, of the University of Minnesota, for an essay on "Federal Intervention in Labor Disputes," and to Mr. David W. Peck, of Wabash College, for a paper on "Reorganization of State Administration." The subjects listed by the committee for 1923 are as follows:

(1) American policy in Haiti and the Dominican Republic, or in Central America.
(2) The Washington Conference for the Limitation of Armaments (or some phase of the Conference).
(3) Congressional control of national elections.
(4) Recent variations from the two-party system, such as (a) the third party movement in Canada, (b) the agricultural bloc in Congress, (c) the Non-Partisan League, or (d) coalition government in Great Britain.
(5) Upper chambers in cabinet-governed countries.
(6) Comparative analysis of the political leadership of (a) Roosevelt and Wilson, or (b) Lloyd George and Asquith, or (c) Disraeli, Gladstone, and Salisbury.
(7) State administration and control over local administration in a particular state, with reference to a specific field of government, such as (a) public utilities, (b) finance, (c) health, (d) education.
(8) Problems of civil service administration (national, state, and local), such as (a) qualification, selection, and tenure of civil service commissioners, (b) organizations of public employees, (c) methods of discipline and removal, or (d) classification.
(9) Practical workings of the direct primary in a particular state.
(10) State police systems in the United States.
(11) Practical workings of county boards in a particular state or county.
(12) The workings of municipal street railway systems in the United States.
(13) Status of the British Dominions in international affairs, (a) in general, or (b) with reference to a particular Dominion.
(14) The Irish Free State.
(15) Critical study of Soviet government in Russia.
(16) Political and constitutional developments in Japan since 1867.
(17) The execution and revision of the treaty of Sèvres (1920).

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Inquiries concerning the contest should be addressed to Professor P. Orman Ray, of Northwestern University.

At the last meeting of the American Political Science Association in Pittsburgh a committee was appointed to confer with representatives from other associations in the field of the social sciences on the subject of the teaching of the social studies in high schools. The first conference of what has come to be called the joint commission on the social studies was held in Chicago on May 20 and 21. Representatives of the American Sociological Society, the American Historical Association, the National Council of Geography Teachers, the American Economic Association, the Association of Collegiate Schools of Business, and the American Political Science Association were in attendance. Dean L. C. Marshall, of the School of Commerce and Administration of the University of Chicago, was chosen chairman and Professor W. H. Kiekhofer, of the department of economics at the University of Wisconsin, was designated secretary.

The meeting was entirely harmonious and quickly developed a real enthusiasm. In the course of the discussion it became evident that the problem of the social studies in the high school cannot be solved without reference to work done in the junior high school, and even in the grades. Indeed the seventh grade appears to be the strategic point at which to introduce a general course in social science. Nor is success likely to attend any effort made on the basis of piecing together fragments of the several social sciences. The members of the conference were convinced that they must forget for the time-being their interest in their special fields and approach the problem from the general point of view of social science as a unity.

It was agreed that some general statement of the purpose of the social studies in the schools was necessary as a point of departure. The representatives of each association were instructed to formulate, on the basis of the opinions of a considerable number of experts in their particular fields, a statement of what their science ought to contribute to a course in social studies in the schools. From these, it is hoped, a comprehensive statement of purpose can be formulated.

The relationship of the joint commission to other agencies engaged in similar investigations was discussed and a satisfactory correlation of all activities in the field appears in prospect. Another meeting of the commission will be held during the first half of October.

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The Teaching of Constitutional Law. In preparation for this paper the writer sent out an informal questionnaire to thirty institutions, large and small, seeking suggestions and information relative to the various aspects of the subject. The answers indicated a surprisingly keen interest in the subject among most of the writers. In the main they were at one in the realization of the existence of a vital problem, in the conviction that there is a real need of an undergraduate course in constitutional law, and in the idea that a combination of text and cases, represented the best methods of approach. As to the place the course should occupy in the curriculum, its relation to other courses, and its scope and content, there was the widest possible variance. On the question of the adequacy of a law school course to meet the needs of political science students, there was a very interesting divergence of views, influenced in many cases by the type of law school course offered in that particular university.

For purposes of discussion it has seemed best to keep the question of teaching constitutional law to graduate students, separate from the problems raised in courses primarily for undergraduates. In dealing with the problem of instruction for graduates the discussion will be confined to the question raised in connection with a general graduate course as distinguished from the problems of specialized study and supervised research that arise in connection with graduate seminars.

Since a large number of universities have a full year course in constitutional law, designed primarily to meet professional needs, attended mainly by professional students, but open to graduate students in the social sciences, the first question that arises is as to the adequacy of such a course in meeting the needs of graduate students. The question of undergraduate students is not raised in connection with this course, because either the course is not open to them, or the legal prerequisites are such as necessarily to bar them.

The great majority of those questioned were of the opinion that a law school course of the type normally given in professional schools is not suitable to the needs of graduate students. Many made their answers depend upon the type of instruction given. The reasons suggested were that in professional instruction the historical, philosophical, and comparative aspects of the subject were ignored, and that attention was concentrated upon the aspects of the field most productive of litigation; whereas many matters of importance to the student of politics are necessarily ignored. In addition there was the objection that professional instruction was too technical, and devoted

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too much to the drawing of nice distinctions and not enough to the tracing of fundamental principles in their process of evolution.

In the writer's opinion, most of the reasons given are unsound. Every good law teacher will agree that an able lawyer must not only know the law as it has been expounded by the courts, but he must prepare himself for a much more difficult task, viz., to know how it will be expounded in future cases. The good lawyer must not only be a good legalist, but a legal prophet. He serves clients best who can most accurately forecast the court's disposition of his client's cause. To do this, the law student must not only know the law today but he must also study the law of yesterday, seeking to divine the underlying principles of its development, in order that by extending those same principles into the future, he may forecast the law as it will be tomorrow. Thus the very necessities of professional instruction require a proportionate emphasis upon both historical and philosophical aspects as a means of articulating fundamental principle, and if such is not given, it is due to poor teaching rather than to the professional character of the institution.

The objection based upon the lack of comparative data to be found in law school courses, is generally valid. The value of such an emphasis is much greater to the student of politics than to the student of law, and this is reflected in the type of course generally found in the law school curriculum. This situation can and is largely met in the courses in comparative government. The question may be well asked, if it is not best met in such courses rather than in constitutional law.

The suggestion that a law school course is too technical or pedantic, raises an interesting issue, with which the writer is not in sympathy. In professional teaching much emphasis is placed upon discriminating analysis, nice distinctions, and a searching comparison of the cases. The first purpose is to prepare the lawyers in habits of close and accurate thinking. Surly this is essential to real scholarship, in both politics and law. And if the writer were to venture a criticism of university training in political science, it would be that we have not sufficiently emphasized this very type of mental discipline, and that we might well seek to emulate the work of this kind that is being done in connection with professional instruction.

The real weakness of this objection becomes apparent, however, only when we consider that the criticism was generally made on the assumption that the exhaustive analysis of cases, interfered with the proper emphasis upon the evolution of fundamental legal principles.

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To the writer it seems obvious that the accurate formulation and tracing of legal principle, can become possible only after a careful analysis and comparison of decided cases. The criticism has weight then, just to the extent that emphasis upon the mental gymnastics involved in the study and analysis of cases, has prevented due consideration to the problems of underlying principle. This is probably what was in the minds of those who urged the objection. The criticism should then be restated, not as against a proper emphasis upon the close analysis of cases, but as against the tendency on the part of certain teachers to emphasize this aspect, at the cost of adequate attention to underlying principle. It is to be noted that this objection thus becomes valid from a professional standard as well as from an academic one. There is also probably little doubt that this is a mistake less frequently made by the non-professional instructor, than by others. Perhaps what is still more important, law school students will follow with much zeal questions of close analysis and discriminating comparisons, while other students are too eager for the process of generalization without the proper preparation of analysis and comparison.

The final objection to the adequacy of a law school course for graduate students, was that the two groups of students were interested in different portions of the field. There can be little doubt that law school discussion tends to center about the phases of constitutional law most frequently involved in litigation, while the student of government or politics may be equally interested in other aspects of the field. Moreover, by the very nature of his professional interests, the law student is more interested in determining the validity of an existing law, than in the constructive aspects of the subject, viz., how a law may deal with a given subject and do it in a constitutional way. The student of legislation, for example, is interested primarily in the latter, while the law student finds his interest in the former. In other words, the interest of political science seems much broader than the concern of the prospective lawyer, and the same topics may therefore very legitimately receive a different emphasis.

This seems a real inherent difficulty. The writer has had experience in teaching constitutional law to professional, non-professional, and mixed groups, and he believes that here is the real problem. If one is teaching a law school class, with only a handful of graduate students, in spite of all that can be done, the discussion, the emphasis and the interest will be dominated by the professional point of view and where that differs from the interest of the graduate student, he will be the loser.

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One may present all the aspects of constitutional law to a law school class, striving to give the emphasis so as to meet the needs of the two groups, but if the class be conducted by the discussion method, the professional interests will dominate and the different interests of the other students will be inadequately met. This is not a criticism of either group or a confession of incompetence on the part of the teacher, but is a mere recognition of the inherent difficulties of the task.

The two outstanding reasons for the inadequacy of the law school course seem then to be, the lack of comparative study and the fact that the two groups were interested, not only in different portions of the field, but also in a different emphasis. It is the writer's belief that the question of comparative constitutional law may be adequately dealt with in the courses on comparative government. Whether the other objections are of sufficient magnitude to justify a separate course for graduate students, will depend upon the condition of the budget, the number of graduate students, and the weight assigned to these particular objections. Some have argued, and with this point of view the writer for the most part agrees, that while the objections are real, there is a certain compensating advantage in having the graduate student come in contact with the intellectual stimulus of professional students who have been specializing in the technique of legal study, where he will get a type of mental discipline, otherwise impossible for him to secure.

We come now to a consideration of an undergraduate course in constitutional law. A few years ago, the writer participated in a discussion of this same subject at Cincinnati, and there the main discussion turned on the desirability of offering any such course in constitutional law. Happily there seems to be little doubt in that matter now. With only one dissenting voter, those who replied to the queries were of the belief that such a course had a definite place in departments of political science. The reasons given for this position, however, were widely different. In fact there were almost as many reasons as there were reasoners.

Obviously no very intelligent discussion of the problems of teaching constitutional law is possible, until we have a working hypothesis as to the need to be met and the purpose to be accomplished. The reasons suggested for offering such a course would seem to fall within one or more of the four following classes:

1. A study of constitutional law as distinct from a descriptive course in comparative government or in American government and politics,

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is essential to an adequate comprehension of our governmental system. For example, one's understanding of the fundamental problems of the division of powers between the national and state governments, and the underlying political, economic and social theories that lie back of them, cannot become specific, vivid or profound, until one has followed the development of the commerce clause through judicial decisions and watched the interaction of constitutional principles and the facts of our economic life. Again, the writer has been unable to bring his students to a keen realization of the fundamental need of the continuous adjustment of governmental concepts to modern complicated problems, through any more effective method than the tracing of the doctrine of the constitutional delegation of legislative power to administrative officers. Here they are compelled to face the problem in the light of concrete, specific cases, to the actual necessities of which the principles of law have been applied. Without this method, the student's ideas of such problems are at best nebulous and hazy.

2. A study of constitutional law is essential to the proper understanding of our basic theories as to the reconciliation of private rights with public welfare. The importance of these theories to political thinking can scarcely be denied, and yet it is equally clear that a real understanding of the principles evolved can be secured only through the study of due process of law and its judicial development.

3. The study of constitutional limitations has a great practical value to all students of social science. Many constructive proposals emanating from these sciences necessarily involve legislation or some kind of governmental activity for their practical realization. This means that they may come within the limits of constitutional restraints, and that these restraints become the actual conditions to the legal realization of the ends involved. The unfortunate results that have followed from ignorance of constitutional restraint are too many, varied and obvious to require description.

4. Constitutional law is undoubtedly valuable as a means of mental discipline. Whatever may be the prevailing theory as to the abstract value of mental discipline, there can be no doubt that habits of discriminating analysis and the accurate formulation of general principle are much to be desired; that these are particularly difficult to develop in descriptive courses; and that legal study is peculiarly well adapted to such an end. When that study has such an intimate relation to government and politics as constitutional law, the arguments in its favor, as one of the basic courses, seem overwhelming.

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Scope and Content of the Course. Some of the suggestions received as to this aspect of the subject showed the most conflicting views. One instructor declared emphatically for a much more comprehensive course than that offered in the law school, and another came out with equal vigor for a more specialized treatment. The majority, however, agreed that the course should be more comprehensive than the law school course, for the reason that the interests of the students of political science are broader than those of the students of law. In this view the writer heartily concurs. On the matter of what aspects of the subject should be emphasized, there were but few replies. Apparently this was considered of little importance, had received little consideration, or was regarded as more or less conconcluded by the limitations of the available text and case-books. Concrete suggestions as to particular subjects to be stressed were limited to constitutional limitations, separation of powers, division of powers, delegation of legislative powers, and the other constitutional aspects of administrative law. A majority of those reporting on undergraduate courses had outlined the scope of their course largely by Dean Hall's little text on constitutional law and had apparently found that it afforded a satisfactory outline. The writer's experience has been that this was a fairly satisfactory basis except for its inadequate treatment of the delegation of legislative power and the constitutional problems of administrative law.

The lack of definitely formulated ideas on this phase of the subject, and the general tendency towards the same conclusions, with only a few conspicuous exceptions, would seem to indicate that an interchange of views on this subject would be mutually helpful and that to a minimum extent, some degree of standardization might be attained.

Place of Constitutional Law in the Political Science Curriculum. Apparently there is little uniformity of ideas or practice in regard to this question which presents some important problems. One distinguished instructor felt very keenly that such a course should be given in the freshman year and required of all students, not only because of the value of the content of the course, but because of its splendid disciplinary value, while another prominent instructor felt there was no place for such a course at all among undergraduates. The majority practice seems to be to open the course to all students above the freshman year, while a considerable number require junior standing, and two or three institutions require senior standing.

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Obviously the question cannot be discussed apart from the matter of prerequisites. Here there is about the same divergence of opinion as to the matter just discussed, one school requiring no prerequisites and another requiring fifteen hours of political science. The most common prerequisite is the course in American government and politics, which runs from three to six hours in different institutions, while a number of schools require six hours of government. Closely connected with this question is the matter of requiring constitutional law as a prerequisite for other courses. The writer was much surprised to find that the course was rarely required as a prerequisite to other courses and that there were very few suggestions that it should be. This is doubtless due in large part to the fact that in many institutions constitutional law is looked upon as one of the advanced courses rather than one of the fundamental courses to be taken early in the undergraduate course. One school requires it for all of the courses in the department, two require it for majors in the department, two for all other courses in public law, and two for all advanced courses in government and administration. The writer is firmly of the opinion that the policy followed at Wisconsin, of opening the course to all sophomores and upper classmen who have had the beginning courses in American government and politics, and of requiring it for all courses in legislation, public law, administration, advanced courses in government, and for all majors in the department gives the best results. To give these other courses without a knowledge of constitutional law requires constant and repeated diversions into the field of law, which involve a large waste of time, and give no commensurate results. The writer has frequently seen courses in government, administration and legislation practically diverted from their original purpose, and forced into second-rate courses in constitutional law, because the students were not grounded in that fundamental subject.

Moreover, some system of prerequisites is essential to prevent wasteful duplication. In such courses as administrative law, legislation and taxation, if one must give an adequate treatment to the constitutional aspects of these various questions, a considerable portion of the time must be given to covering the same fundamental points again and again as they come in connection with each separate course. This problem of correlation to avoid wasteful duplication can be solved only by a rational plan of prerequisites.

The objections that will be made to this point of view are that it interferes with registration in the more advanced courses, and that

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there are students in political science and allied departments who need some of these advanced courses, but who cannot take them if a prerequisite is required. To these objections the writer can only urge the futility of taking a specialized course for which the preparation has not been adequately made. It is his experience that the great majority of students will be better prepared for the work in hand if they take the required course, rather than the more advanced course, for which it is a prerequisite, provided the system of prerequisites is a rational one based upon a real interrelationship between the courses concerned.

In view of the foregoing it would seem that the question of prerequisites and required courses may be studied and discussed with great profit.

Method of Instruction. Here there was greater approach to unanimity than in any other aspect of the subject. With very few exceptions all favored a combination of text books and cases, the underlying reason seeming to be that with this method the less important topics could be covered more quickly with a text book, leaving the more vital matters to be dealt with by the study of cases.

The most significant suggestions dealing with methods of class room instruction had to do with the problem method. Apparently this had not been systematically employed by many instructors but wherever it had been, the reports were uniformly enthusiastic. Here the writer's experience seems to be fairly typical of those who have laid great stress upon the method. At Wisconsin, it is the custom to place in the hands of the students a set of problems. Generally these are close cases which have been decided by the courts, together with such pending constitutional questions as have come to the notice of the instuctor, and the constitutional problems that have been raised by the Wisconsin legislative reference library, the municipal reference library, and similar institutions. The problems are arranged in the order of the subject matter of the course, and the students are expected to prepare written opinions, disposing of the cases, in the light of the legal principles developed in the cases, text and discussion.

The advantages of this method are threefold. In the first place, it trains the student in the application of principle to difficult questions of fact, an important matter to every student of government, and yet one that is quite frequently ignored in considering methods of instruction. The mastery of legal science involves two distinct steps, first, the analysis of decided cases and the accurate formulation of under-

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lying principle, and second, the correct application of those established principles to new cases. The problem method is essential to any effective training for the latter.

In the second place, by the use of such practical problems the student may be trained to the constructive solution of constitutional problems raised in connection with the drafting of legislation. It is one thing to be able to say that certain proposed legislative measures are unconstitutional. It is frequently a much more difficult task to determine whether or not the same public policy embodied in the proposed statute may be expressed in another statute that will avoid the constitutional defect. To the student of legislation in particular, and to the student of the social sciences in general, this is a very practical and a very important question. For example one instructor submitted a list of problems, some of which were set to illustrate this very point. The student was asked to determine if there was any constitutional method by which the federal government could establish the same public policy represented in the federal child labor law, which the court had held to be void. Another problem asked for suggestions as to how a certain law which the courts had held void, could be so amended as to be valid and at the same time establish as nearly as possible the same public policy as that contemplated in the original act. This type of problem compels the student to canvass the available legislative powers in the light of constitutional restraints, and emphasizes the importance of the question of what can be done rather than what cannot be done.

The third advantage of this problem method is its tremendous pedagogical value. The student finds in the problems, if they are skilfully selected and represent live constitutional issues, a challenge to intellect, scholarship and resourcefulness. The writer has frequently entered the lecture room to find the class in constitutional law gathered in animated groups throughout the room, struggling and contending over the different problems, in a manner that spoke volumes for the interest and enthusiasm that had been aroused. It results in getting students to put in long periods of intensive study on a single question, something which undergraduates are loath to do. But more important still, it means that the student is put to an objective test of correctly stating and applying legal principle to concrete problems. His written opinions on these problems are submitted to the criticism of the instructor and the class, which places a tremendous premium on habits of clear, definite and precise reasoning and expression. Finally it vitalizes the

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whole subject and emphasizes the practical every day value of sound scholarship and accurate thinking, for the subject is presented in terms of modern problems of pressing moment.

Ways and means of best utilizing the problem method of legal instruction should receive the full discussion that its inherent importance would seem to justify.

Emphasis upon the Constructive Formulation of Underlying Principle. While this subject has already received some attention, it was only incidental and not commensurate with its inherent importance. Upon this subject, there were practically no suggestions, and the writer must here depend upon his own ideas and experience. This is a subject that has been too frequently ignored, or only superficially covered. This is particularly true with regard to such vague and indefinite provisions as due process of law. Much that has been said by writers and by the courts has been of literary rather than of scientific value. Yet the great significance of the concept of due process will hardly be denied. It is around its development and application that there is being fought out the age long struggle between private right and governmental power. It is being fought with all the power, the brains, and the skill that are always involved where both great material and human interest are at stake. The underlying principles that are resulting are the more significant because of the manner of their evolution. They are not being evolved out of a speculative or metaphysical endeavor to solve the problem, but by a tedious process of proceeding from concrete case to concrete case, step by step, always forced to face practical, real situations, by the constant necessity for the definite solution of the concrete cases submitted for judicial decision.

Here we have a very earnest effort to contribute to the solution of a very important problem. What have been the results of these efforts? Have they contributed anything to our political philosophy? Have they given us any intelligible principles or standards? Back of the judicial rhetoric, the hastily written decisions, the mass of dicta, is there anything articulate, fundamental, or profound? Are there any definite, inherent tendencies that are consciously or unconsciously followed in the development of judicial doctrines? These are problems deserving of greater emphasis and keener study than they generally receive. These would involve the psychology and the technique of judicial decision. They would involve the relation of public opinion to judicial doctrine. They would involve a more careful study of the

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outstanding contribution of Mr. Justice Brandeis to the subject of due process, made in his famous brief on the eight hour day, when he secured the judicial recognition of the fact that due process cases involve both principles of law and questions of social facts, and that while they are mutually interdependent for the purposes of judicial decision, they are entirely severable as to the methods of their solution. While the solution of one requires the technique of legal analysis and synthesis, the other question is one of objective evidence and expert investigation. The writer is of the firm belief that much of the judicial confusion is due to a failure to discriminate between the two kinds of questions involved, and the foolish attempt to solve technical questions of fact by the maxims of legal science.

Certainly here is a group of problems for the student of political science. These particular problems may be better suited to graduate than to undergraduate courses; nevertheless, any adequate undergraduate course should raise the questions and stimulate an interest in their study and discussion, for they are fundamental to the understanding of American government. How can such questions be best discussed? How far can such discussions be profitably carried on in undergraduate courses? Upon these and related questions further study and discussion is earnestly invited.

ARNOLD BENNETT HALL.

University of Wisconsin.

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DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

IN PREPARATION AT AMERICAN UNIVERSITIES[1]

AMERICAN GOVERNMENT AND PUBLIC LAW

Barth, Harry A., A Revision of the Expending System of the State of Pennsylvania, with a consideration of State Budgetary Procedure and State Accountancy. University of Pennsylvania.

Field, Oliver P., "Political Questions" in American Constitutional Law. University of Minnesota.

Gaus, John M., Employment Policies of the Federal and State Governments. Harvard University.

Gosnell, A. F., Thomas C. Platt, Political Manager. University of Chicago.

Hanford, A. C., Problems of Reconstruction in State and Local Government by Constitutional Amendment. Harvard University.

Harris, J. P., An Analysis of Systems of Registration in the United States. University of Chicago.

Hayes, Fred E., The Military Power in Relation to Civil Authority during the Civil War. University of Illinois.

Honeywell, R. J., Executive Relations to the United States Senate. Harvard University.

Ketcham, Earle H., History and Interpretation of the Sixteenth Amendment. University of Illinois.

Lambie, M. B., Some Aspects of the Merit System. Harvard University.

Lancaster, Lane W., State Supervision of Municipal Finance. University of Pennsylvania.

Law, J. Thaddeus, Delegation of Legislative Power to Administrative Bodies. University of Wisconsin.

Macdonald, Austin F., Federal Subsidies to the States. University of Pennsylvania.

Mason, A. T., The Application of the Sherman and Clayton Acts with reference to Organized Labor. Princeton University.

Mellon, H. G., The Jurisdiction of the Court of Claims. American University.

McGuire, P. S., The Genesis of the Interstate Commerce Commission. Cornell University.

Morganston, Charles E., The Appointing Power of the President. American University.

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[1] This list is supplementary to the list printed in the *American Political Science Review*, XIV, 155–158. For earlier lists see the *Review* as follows: IV, 420 (1910); V, 456 (1911); VI, 464 (1912); VII, 689 (1913); VIII, 488 (1914).

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Mott, Rodney L., Origin and Development of the Concept of Due Process of Law. University of Wisconsin.

Richardson, D., Constitutional Doctrines of Mr. Justice O. W. Holmes. Johns Hopkins University.

Richardson, Rupert N., The Development of State Constitutional Limitations on Legislatures. University of Texas.

Robinson, G. C., Executive Influence on Federal Legislation. Harvard University.

Schumacher, Waldo, The Operation of the Direct Primary in Wisconsin. University of Wisconsin.

Scott, J. F., The Evolution of Party Organization in California. University of California.

Short, Lloyd M., The Development of National Administrative Organization in the United States, University of Illinois.

Shoup, E. L., The Vice-Presidency of the United States. Harvard University.

Sikes, E. R., Federal and State Corrupt Practices Acts. Cornell University.

Wells R. H., The Veto Power of the Governor in the American States. Harvard University.

White, Howard, Determination of Military Policy in the United States. University of Illinois.

White, Paul L., The Sources of De Tocqueville's "Democracy in America." Yale University.

Williams, Bruce, The Sub-Legal Rights and Obligations of States. Johns Hopkins University.

Wriston, H. M., Special Agents in American Diplomacy. Harvard University.

LOCAL GOVERNMENT

Hoyt, Josephine, The Berkeley Police System. University of California.

Kingsbury, J. B., The Development of Personnel Administration in Chicago, 1895–1915. University of Chicago.

McClintock, Miller, Traffic Problems in American Cities. Harvard University.

Taylor, R. E., Municipal Budget Making. University of Chicago.

POLITICAL THEORY

Chase, E. P., The Constitutional Position and Political Theory of the Non-Jurors. Harvard University.

Hart, Clyde, Political Ideas in American Literature. University of Chicago.

Malone, Dumas, The Public Life and Writings of Thomas Cooper. Yale University.

O'Neill, Anne W., The Political Theory of Francis Lieber. University of California.

Spykman, N. J., The Social Theory of George Simmel. University of California.

Tillema, John A., The Influence of the Law of Nature on United States Government and Law. University of Illinois.

FOREIGN AND COMPARATIVE GOVERNMENT

Nakano, T., The Ordinance Power of the Japanese Emperor. Johns Hopkins University.

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Mims, Edwin, The Conflict of Landed and Industrial Interests in the British Parliament following the Reform Bill. Yale University.

Willis, Frances E., The Belgian Parliament. Leland Stanford Jr. University.

INTERNATIONAL LAW AND INTERNATIONAL AFFAIRS

Buell, R. L., The Washington Conference and its Background. Princeton University.

Donahue, James L., The Shantung Question. American University.

Fell, E. T., Recent Problems in Admiralty Jurisdiction. Johns Hopkins University.

Godshall, W. Leon, China's International Relations respecting Shantung. University of Pennsylvania.

Lasswell, H. D., Formation of Certain International Attitudes. University of Chicago.

Lynskey, Elizabeth, The Influence of Political Parties on the Foreign Policy of the United States. University of Minnesota.

Manson, Fletcher S., Liberia in its International Relations. University of Pennsylvania

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BOOK REVIEWS

EDITED BY A. C. HANFORD

Harvard University

Public Opinion. By WALTER LIPPMANN. (New York: Harcourt, Brace and Company. 1922. Pp. x, 427.)

Graham Wallas began the preface to his very significant book, *The Great Society*, as follows: "Dear Walter Lippmann, This book develops the material of that discussion-course (Government 31) which you joined during my stay at Harvard in the spring of 1910." And he concluded: "I send it to you in the hope that it may be of some help when you write that sequel to your *Preface to Politics* for which all your friends are looking."

Shortly thereafter Lippmann's *Drift and Mastery* appeared, a sequel undoubtedly and an admirable book, but not exactly that sequel which Wallas had in mind. Then came the war with its diversion of men of letters into new and strange activities. Presently Lippmann found himself an officer in the military intelligence service, with the opportunity of a life-time to put his political theories to the test. While the Bolsheviks were bombarding the German home-defences with the latest opinions "made in Russia," he was helping to drench the front-line trenches with the best of American-made opinion. He had become in truth a manufacturer of opinion, distributing his product with the stolid zeal of one who controls the market for a well-advertised brand of soap or chewing-gum. "Those who can, do; those who can not, teach." Lippmann could, and did. But unlike many doers, Lippmann can tell how he does it. Hence his present book, *Public Opinion*, the true sequel, for which Wallas and his other friends have confidently waited, to the early *Preface to Politics*.

Lippmann has followed through the lead which Wallas originally opened up in his *Human Nature in Politics*. Unlike the general run of *post-bellum* volumes by late combatants, his is not a record of experiences but an analysis of ideas, illumined doubtless, as readers of his preliminary essay, *Liberty and the News*, will have anticipated, by his war experiences but founded upon his earlier studies in political science.

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For Lippmann is a Platonist. He begins with a reference to Plato's theory of ideas. He closes with an endorsement of Plato's plea for a government of philosopher-kings. The modern philosopher-king, however, is to be no superswordsman, like Plato's selected guardians, but a kind of superstatistician.

Many modern Platonists seem to misunderstand the other great fountain of political theory, Aristotle. Lippmann quotes Aristotle only once, and then he quotes Aristotle's defence of slavery only to condemn it. But it is possible to understand Aristotle's defence of slavery, not as a feeble attempt to justify the then existing institution, but as a radical attack upon it. For Aristotle justifies the enslavement only of those whom nature has designed for slavery, and it is clear that he did not deem these identical with the actual slaves of his time. So today the existing wage system can be justified, if at all, only upon the Aristotelian logic. But the critic must not disparage the work of the Platonist on the ground that he is not an Aristotelian. Lippmann's is a true masterpiece. It will give much aid and comfort to all teachers of political science, and there will be no fairer test of the quality of their instruction than to ascertain whether their pupils find the reading of it a pleasurable and a profitable exercise.

The author's concern is primarily with the sources and process of formulating public opinion rather than with its content or manner of expression. If space permitted it would be interesting to compare his definition and treatment with earlier discussions by Bryce, Dicey and Lowell, and the more recent work of A. B. Hall on *Popular Government*. Bryce and Lowell are quoted, but there is no reference to Dicey.

A. N. HOLCOMBE.

Harvard University.

The Conduct of American Foreign Relations. By JOHN MABRY MATHEWS. (New York: The Century Company. 1922. Pp. xi, 353.)

Foreign relations have so long been a subject for historical treatment that this volume by Professor Mathews breaks new ground. The purpose of the work is to consider the foreign relations of the United States from the standpoint of political science. A great number of topics have been arranged with sound judgment and discussed in an interesting manner. One should not be disappointed if he does not find the finished style that marks the volumes of Trescot or the fullness

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of treatment which John Bassett Moore bestows upon the fundamental problems of American diplomacy in his most recent book. Neither is necessary to the achievement of Professor Mathews' purpose.

The really important chapters outline the governmental organization for the conduct of foreign affairs, set forth the problems of diplomatic intercourse, and consider from the standpoint of constitutional law as well as political practice the various phases of the treaty-making power. Diplomatic events furnish illustrations of the principles under discussion. There is always a danger of repetition in the topical treatment of numerous subjects, a fault from which the book is not wholly free.

The dictum of Jefferson that "the transaction of business with foreign nations is executive altogether" is transformed in this volume into a conclusion that the presidential office is fundamentally and intrinsically better adapted than a legislative body for the control of foreign relations. But the author suggests that "it may, however, be not only a necessity of practical politics, but also a moral duty of the President, so far to coöperate with the other branch of the treaty-making power as to consult with the Senate, or at least to take into his confidence influential members of the foreign relations committee, during the course of important negotiations" (p. 151). The debate between Senator Bacon and Senator Spooner in 1906, in which the former contended that the rights of the Senate extend to all stages of a treaty negotiation, while the latter insisted that these rights were restricted to the stage between the affixing of signatures to a treaty and its ratification, is correctly estimated as involving no necessary conflict between what were once thought opposing views (p. 138). Legal control by the Senate can be exercised only in the final stages incidental to ratification. The position of Senator Bacon can mean only that the Senate is free to proffer advice to the President at any stage in the negotiation of a treaty. But anyone can do this. It is the fact that such advice proceeds from the body which will subsequently be called upon to ratify the action of the President that gives it weight.

The volume is well documented and shows painstaking investigation. It will not only be helpful to the reader who desires to find the specific principles which determine the course of governmental action in the conduct of foreign affairs, but will prove of value in connection with college courses in diplomacy and international relations.

WILLIAM S. CARPENTER.

Princeton University.

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The History and Nature of International Relations. Edited by EDMUND A. WALSH. (New York: The Macmillan Company. 1922. Pp. xvi, 299.)

The contents of this volume may be divided into four parts. There are two papers dealing with the development of international organization in the past—one on international organization and practice in antiquity, by Professor Rostovzeff of Wisconsin, formerly of the University of Petrograd; and one on mediaeval diplomacy, by Professor C. J. H. Hayes. There are four papers on the structure and methods of international governmental relations in our own time, including two papers by Dr. James Brown Scott and Professor John Bassett Moore. These six papers constitute two-thirds of the whole book. There follow a paper on the content of international economic relations by Professor Laughlin and three papers on the content of international political relations—Latin-America, the Far East, the United States—by Drs. Rowe, Reinsch, and Borchard. The last three papers occupy about one-third of the volume, the essay on economic relations being very short, not, presumably, because there was some desire to neglect the economic foundations of international relations, as one irate economist seems recently to have supposed, but because the students in the School of Foreign Service at Georgetown, where these papers were originally read, have a full training in international economic relations as a part of their regular work.

It is, of course, no reflection upon any of the authors of these various papers to point out that, to the average reader, certain of them are of much greater value than others, or, rather, that just at the present time it is especially desirable to have published such papers as those dealing with the methods of international government which are available for settling the various economic and political controversies arising among the nations. Granted the existence of the latter, and irrespective of their exact content at any one time or in any particular case, what we need is a study of the machinery and procedure necessary for their regulation and control. Hence the value of the six papers first mentioned.

It is to be hoped that such propagandist utterances as those in the third and fourth paragraphs of the preface and in the appendix will not be too common in subsequent numbers of the Georgetown Foreign Service Series.

PITMAN B. POTTER.

University of Wisconsin.

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The Influence of the Sea on the Political History of Japan. By VICE ADMIRAL G. A. BALLARD, C. B. (New York: E. P. Dutton and Company. 1921. Pp. xix, 311.)

Sea-Power in the Pacific, a Study of the American-Japanese Naval Problem. By HECTOR C. BYWATER. (Boston and New York: Houghton Mifflin Company. 1921. Pp. ix, 334.)

"Lord Palmerston once remarked that whenever he had particularly difficult negotiations to undertake with foreigners he preferred to employ a naval officer," says Vice Admiral Ballard, retired, of the British navy, when dealing with President Fillmore's selection of Commodore Perry for the mission to Japan (p. 80). Certain it is that naval officers have often proved capable of achieving diplomatic results in practice, and since Mahan's works no one can question their equal capacity to have a theoretical understanding of the roots of diplomatic prestige. In writing they are apt to ignore the forms and technicalities of diplomacy delighted in by international lawyers and professional diplomatists but generally they have a firm grasp of reality. Both observations apply to the present author.

Vice Admiral Ballard offers the history of Japan as affected by naval power from Kubla Khan through the Russo-Japanese War. We peruse episodes such as the prompt beheading of Kubla's envoys to Japan, Hideyoshi's six year effort to conquer China, the martyring of a quarter of a million Catholicly Christianized Japanese at command of Iyemitsu with the aid of the Prostestant Dutch, and the "good humor" with which the Satsuma clan paid an indemnity after destruction of their city by the British navy and asked whether they might not purchase a war vessel in England, and arise with renewed belief in Darwin's dictum: "*Natura non saltum.*" Japan did not jump from nothing to world power in fifty years. The same heroic and determined people, the same willingness to undertake aggressive war against vastly superior forces, the same adroitness in profiting by defeat and imitating the excellencies of the enemy are evident in the thirteenth and in the nineteenth centuries. "Japan," says the author, "has been potentially a great power from a date antecedent to the political creation of most of the states composing modern Europe" (p. 3). That her strength remained in abeyance was due, in his opinion, to her failure to appreciate the importance of a navy for an insular nation.

The style sometimes lacks ease, and details of naval strategy occasionally become too prolonged for the comfort of the lay reader, but

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the book contains, for the present-day student of world affairs, much that is little known and worth knowing. The writer's admiration for the Japanese character and sympathy for her policies may be taken exception to by some readers. He approves of the annexation of Korea (p. 284), believes the Anglo-Japanese alliance has kept peace in the Pacific and prevented the exploitation of China (p. 289), and endorses the Japanese claim to a Monroe Doctrine of the East (p. 294).

Mr. Bywater has approached the Japanese question from a strategic rather than a historical standpoint. His book is a *livre d'occasion*, but a good one. It contains the immediate background of the Washington Conference both as to armaments and the Far East. The reviewer can testify that it was thoroughly read by many of those influential in the councils of that gathering.

Bywater is an expert on naval strategy and imparts his wisdom in language for the layman. He shows the vulnerability of Guam and the Philippines in a Pacific war, and brings home to the reader the importance of bases near to the scene of action. Perhaps he would not go so far as Ballard, who says that with the present distribution and equipment of naval bases Japan is invulnerable with a fleet one-third that of any enemy, but his comments give ground for speculation upon the effect of the 5-5-3 ratio. There is a good brief account of present controversies between the United States and Japan and an extended analysis of the strength of the two navies. The book is supplied with maps and charts illustrating strategic factors in the Pacific and the relative size of navies. Though some of the facts have been rendered obsolete by the Washington treaties, and a number of the chapters are too technical for the general reader, the book has much of interest for the student of current world problems.

QUINCY WRIGHT.

University of Minnesota.

An American Diplomat in China. By PAUL S. REINSCH. (Garden City, N. Y.: Doubleday, Page and Company. 1922. Pp. xii, 396.)

China at the Conference, A Report. By WESTEL W. WILLOUGHBY. (Baltimore: Johns Hopkins Press. 1922. Pp. xvi, 419.)

In many respects these two books, though differing greatly in character and style, complement each other; the former contains a lively account of the incubation period of some of the most important Chino-

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Japanese problems, the latter a record of the steps leading up to their final solution at the Washington Conference and elsewhere.

Both books reflect a friendly attitude towards China. Dr. Reinsch's pages are full of good feeling not only for the members of Chinese officialdom with whom he associated at Pekin, but for the swarming native population "with its good-natured consideration of the other fellow, its constant movement, its excited chatter and its actual moments of heated but bloodless combat" (p. 22). Professor Willoughby's attitude toward the Chinese is reflected clearly in his statement (p. 18) that "the chief political problem which the Conference was called to solve was to find means of placing a restraint upon the imperialistic aims of Japan."

The student familiar with MacMurray's compilation, especially the second volume, and Willoughby's *Foreign Rights and Interests in China* will find in these two books much supplementary material. So much was accomplished at the Washington Conference that Willoughby's *Report* is essential to an understanding of the existing situation in the Far East.

The real value of Dr. Reinsch's new book lies in the record which it preserves of events and people in Pekin during the war years 1914–1919. Its weakness, if it is possible to attribute weakness to so fascinating a book, arises from the fact that it is a diary which has been published too soon after the events to permit of everything being said. For example, when Dr. Reinsch takes up the Shantung question he prints from his diary only a few pages designed to display the excitement in Pekin as the result of the encroachment of the Japanese. None of the other factors essential to an understanding of that Japanese move are mentioned. During the years Dr. Reinsch was American minister in Pekin, a number of events of first-rate importance occurred and his book refers to them all. In addition to the seizure of Shantung he discusses the Twenty-One Demands, exchange of the Ishii-Lansing notes, China's entrance into the World War, and in strictly domestic affairs, the fall of Yuan Shi-Kai, the secession of the Canton government, and the adventure of Tuan Chui Jui.

Professor Willoughby's *China at the Conference* is much more than a report. It contains at least two chapters (II and XXIV) which embody important generalizations on the Far Eastern situation. The other chapters of the book present not only a complete program of the work of the conference insofar as it related to China and Siberia, but also a description of its organization and procedure. The appendices contain

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the texts of the treaties and resolutions that refer to China, and of the treaty between China and Japan in settlement of the Shantung question. Coming from such a highly equipped student of the Far East and so competent an organizer of materials, the *Report* leaves nothing to be desired in the arrangement and presentation of the subject.

W. W. McLaren.

Williams College.

A Revision of the Treaty. By John Maynard Keynes. (New York: Harcourt, Brace and Company. 1922. Pp. viii, 242.)

What Next in Europe. By Frank A. Vanderlip. (New York: Harcourt, Brace and Company. 1922. Pp. x, 308.)

Up to a point, the authors of these two books view the European situation alike. Both regard the peace treaties as ill-advised, unenforceable, and ruinous. Mr. Keynes, whose opinions were widely exhibited in the volume to which his present book is a sequel, rails against the agreements and their makers in a manner in which the more restrained Mr. Vanderlip does not indulge; yet even the latter, in a chapter title, calls the treaties "poisonous." Both writers consider that Europe can never be placed upon its feet economically under the present terms. Both say that there must be revision.

Beyond this, however, there is considerable divergence. Mr. Keynes feels the iniquity of the treaties so keenly that he can talk about little else, save plans for drastic revisions. He considers that his earlier attacks upon the instruments' economic clauses, particularly the reparations sections, have been proved entirely justified. He feels that the atmosphere of make-believe in which Europe has been living during the past two years can no longer be maintained. And he finds the remedy for practically all existing ills in a rewriting of the treaties, almost from A to Z. Mr. Vanderlip, on the other hand, criticises the treaties only incidentally. He regards them as in a number of respects unfortunate, but he would not, at this late day, press for their revision except as it is absolutely necessary in order to permit a workable plan of financial and commercial reconstruction to be carried out; and in this connection he brings forward again his well-known plan for employing the Allied debts as a general European reconstruction fund, and also his scheme for a European federal reserve bank.

Mr. Keynes' book presents the keener analysis of the particular problems of reparations, indemnities, and cancellation of inter-allied

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debts; Mr. Vanderlip's volume has wider sweep, is vastly more philosophical, and will contribute more to a balanced view of the world situation as affected by Europe's troubles, and to a wholesome attitude of thinking men, especially Americans, toward international politics generally.

FREDERIC A. OGG.

University of Wisconsin.

Stein and the Era of Reform in Prussia, 1807–1815. By GUY STANTON FORD. (Princeton University Press. 1922. Pp. vii, 336.)

Since the era of Frederick the Great, Germany has produced two great statesmen. All others in comparison are pigmies. These are Baron vom Stein and Bismarck. Any perspective of the modern history of Germany must focus about the careers of these two men. Both were statesmen of the first rank, though the basic principles of their statesmanship were poles apart. Bismarckian statesmanship determined the course of German policy from the fall of Metternich to the fall of William II, for the "dropping of the pilot" in 1890 in no wise meant the abandonment of his principles or his policy. Under the last of the Hohenzollerns the technique and tactics of German politics were different, but the principles which underlay German statecraft continued to be those of the iron chancellor. The cataclysmic frustration of Bismarckian statesmanship involves a reaction toward the ideals and principles of the statesmanship of Stein. Professor Ford's study has, therefore, a distinct timeliness.

The circumstances surrounding the most important phase of Stein's work are indeed similar to those which confront German statesmanship today. Prussia had been thoroughly vanquished by Napoleon at the battle of Jena. Humiliated and disillusioned, her ruler, for a time, was willing to take counsel of the one great man of brains and character, instead of hearkening to the flattering voices of the crowd of cheap politicians who incontinently crowded around the steps of the throne. Stein was no flatterer. He had been previously dismissed from the ministry as "a refractory, insolent, obstinate and disobedient official." But it was to him that Frederick William III turned again in his hour of deepest distress. Short though this second ministry was, it was then that the foundations of modern Germany were laid—the foundations indeed, for the superstructure was to be built by other

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hands and in a far different fashion from what Stein would have wished. Stein's is the story of far-visioned statesmanship, permitted to accomplish a few great and masterful reforms, to design the broad lines of a wise and progressive policy, and then repudiated.

Professor Ford's volume is no mere re-hash of the great *Life and Times of Stein* by Seeley, which now for more than a generation has illuminated this period of German history for English and American students. A great deal of new material has been unearthed since Seeley's work was done, of which Professor Ford takes full account. Especially worthy of mention is his critical analysis of the condition of the Prussian peasantry before 1807, in which he reveals a quite different picture than that which we had previously accepted. The work was largely completed before the war, which explains the lack of frequent reference to contemporary events. But the events and facts of that crucial epoch of 1807–1815 speak for themselves and the thoughtful reader can make the application to the situation of today. Professor Ford has written a scholarly and authoritative treatise on a period which was the turning-point in the history of modern Germany, and on a man who was the almost perfect incarnation of true statesmanship.

WALTER JAMES SHEPARD,

Ohio State University.

Introduction to American Government. By FREDERIC A. OGG and P. ORMAN RAY. (New York: The Century Company. 1922. Pp. viii, 841.)

This volume by two writers of established reputation is designed for use in introductory college courses in government and covers the entire field of American government, national, state and local. In order, however, that the student may have a body of fundamental principles with which to understand and appreciate more fully the form, purpose and workings of American government, Part I (pp. 3–81) of the book is devoted to a study of "the nature of government in general, and of the state as an institution shaped by human experiences in widely separated lands and ages." With this end in view, there are brief chapters on the nature and origins of the state, state functions and relations, the basis and kinds of government, the distribution of governmental powers, and the position of the individual in relation to the state. Although this portion of the work covers less than one hundred pages and therefore does not go much below the surface, its inclusion by way of introduction

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constitutes one of the most original features of the work. Many students enrolled in beginning courses in political science do not continue further into the subject, and if they do not obtain an idea of some of these larger, more fundamental concepts of government in such courses the opportunity is lost.

Having outlined something of the nature and objects of government in general, the authors devote the second part of the book (pp. 83–223) to five preliminary subjects relating to the foundations of constitutional government in the United States, namely: (1) English and colonial origins; (2) the formation of the Federal Constitution; (3) the relation between the states and the central government; (4) the citizen, his rights and privileges and (5) the various ways in which the Federal Constitution has developed so as to adapt itself to changing ideas and needs. Perhaps the best chapter in this part of the work is that on "The States," which explains concisely the constitutional position of the states with allusions and references to the more important Supreme Court decisions.

With the necessary background thus established in the first two hundred pages or so of the volume, the remainder is given over to the more detailed study of the various units of government, Part III (pp. 225–544) being devoted to the national government, Part IV (pp. 545–713) to state government, and Part V (pp. 715–809) to local government, including both urban and rural. Political parties are touched upon in both Parts III and IV; the history of parties is set forth in the former, the party machinery and the various reform movements in the latter. These sections of the book on the structure and functions of American government are admirably put together, and while the limitations of space and purpose give little opportunity for originality or speculation, they contain a mass of accurate, interesting and vitally important information which has been carefully analyzed and clearly presented.

Defects and failures of existing political institutions are dwelt upon fully, not merely for the sake of criticism but in order to direct the mind of the student along "forward-looking and constructive lines," because in practically every instance suggestions for improvement are offered. Of particular interest and timeliness are the chapters on the cabinet, civil service and the departments at Washington, in which the authors discuss the need for an improved policy of personnel administration, especially in relation to advancement and compensation, and outline the services rendered by the various departments. There is a

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good brief account of the movement for the reorganization of state administration, an interesting description of the personnel of typical state legislatures, and a concise and informing chapter on the party system in the states, while the chapter on the reconstruction of county government is one of the best short accounts of the principal faults and the proposals for improving county government. One cannot help but wish, however, that the authors had found space to devote more attention to several matters of importance which are given only brief attention or considered incidentally, such as judicial control over administration, the effect of the grant-in-aid system upon the position of the states and the functions of state administration.

Taking the book as a whole its conspicuous features are its accuracy, comprehensiveness, incisiveness in the presentation of facts and conclusions, and the clear and readable style in which it is written. The chief shortcoming is the fact that the authors have attempted to cover so much ground that there has been little opportunity for the development of important ideas, but this could not have been accomplished without spreading the material over two volumes. In this work Professors Ogg and Ray have given college teachers an excellent text book and have set a high standard for the other volumes in the *Century Political Science Series* of which this is one of the first to appear.

A. C. HANFORD.

Harvard University.

War Powers of the Executive in the United States. By CLARENCE A. BERDAHL. (Urbana, Ill.: University of Illinois *Studies in the Social Sciences*, Vol. IX, Nos. 1 and 2. 1921. Pp. xvi, 296.)

The general tendency of Mr. Berdahl's thesis seems to be to invest the President in war time, in his capacity as Commander-in-Chief, with the powers of a military dictator. Thus on page 111, he regards with much complacency the prospect of another President imitating Lincoln's action at the opening of the Civil War in raising an army without previous authorization by Congress, should he consider the emergency "serious enough;" while on page 192, the same President's action in suspending the privilege of the writ of *habeas corpus* and in ordering arbitrary arrests is held, in the language of Professor Burgess, to be "a precedent of the Constitution," and to warrant the deduction, stated in the language of Professor Dunning, "that the President may in an emergency exercise the right to arrest and detain individuals until

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Congress acts." And not less startling is the view advanced on pages 185 and 186, that the President is vested "impliedly by the rules of international law" "with full power to restrict and control the conduct and movements" of alien enemies within the United States, "as he sees fit," and that the laws of Congress dealing with the same subject are quite gratuitous. The power thus claimed for the President is called his "police powers" (p. 183); and elsewhere we learn (p. 197), again on the authority of Professor Burgess, that by virtue of this power, the First Amendment "may be suspended—when in the judgment of the President the public safety demands it."

If we test these propositions by the intention of the framers of the Constitution, we are at least safe in saying that they did not intend to bestow upon the President a greater sweep of prerogative than belonged to George III, who certainly would never have ventured to suspend *habeas corpus* on his own motion. If, again, we test it by the doctrine of the Supreme Court, we find it contradictory of *ex-parte* Milligan (4 Wall. 2), which not only treats constitutional limitations as designed for war no less than for peace, but defines the President's power as Commander-in-Chief simply as one of military command. Finally, if we test it by what occurred in the late war, we find that while President Wilson exercised vastly greater powers than did President Lincoln, so far as these powers touched the ordinary rights of the people of the United States, they all were powers which were authorized by Congress. In short, the substantive powers of war belong to Congress; and the President's power, while invested with a certain range of discretion which Congress may not constitutionally curtail, is in its own nature a merely instrumental power. In the very act of declaring war, Congress habitually "directs" the President to use the army and navy to make its declaration effective.

On the recently mooted question of how war may be terminated, Mr. Berdahl arrives at the conclusion (p. 232) that "a treaty of peace is the only method by which a foreign war may be terminated by the United States." The objection that the other party to the war may have been subjugated and there be nobody to make a treaty with, is met by the apparently serious suggestion that a war of conquest would be unconstitutional, as if, forsooth, none of our wars had been attended by conquest! Nor will Mr. Berdahl admit the soundness of the proposition that Congress, by repealing its authorization of hostilities—which might seem to be what is meant by "war" in the constitutional sense—could restore peace. "Congress," he says, "does not have an absolute

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power of repeal . . . . for example, states are admitted to the Union by means of an enabling act . . . . but no state can be deprived of its place in the Union by a subsequent repeal . . . . of that earlier act of admission." Naturally not, since once a state is admitted it becomes a creature of the Constitution; but can it be said that once a war is declared it becomes a creature of the Constitution? Certainly, if the United States can terminate a condition of war only by formal treaty of peace, it lacks an almost universal attribute of sovereignty in the field of foreign relations (see *Law Quarterly Review*, Jan., 1922, pp. 26ff.), a defect, however, of which apparently neither President Harding nor the present Congress is aware. For on July 2, 1921, the President approved a joint resolution declaring the state of war which had existed between the United States and Germany since April 6, 1917, at an end; and in his recent proclamation the President dates peace with Germany not from the ratification of the treaty of peace with that country, but from July 2.

Mr. Berdahl's work has decided merits. He sometimes overvalues controversial opinions and builds too ambitiously on the precarious foundations they afford; he sometimes makes too sweeping statements; but his volume is well written, well arranged, contains a store of valuable information, and displays wide research. It is perhaps the more valuable for the challenge it throws down on the important topic with which it deals.

EDWARD S. CORWIN.

Princeton University.

Budget Making: A Handbook on the Forms and Procedure of Budget Making with Special Reference to States. By ARTHUR EUGENE BUCK. (New York: D. Appleton and Company. 1921. Pp. ix, 234.)

The author of *Budget Making* has rendered a distinct service to governments and to citizens, for in this book he has provided a practical, comprehenisve, and interesting manual of budget making. Sensing the growing need for such a manual, the author has admirably filled a big gap in the literature of budgets. *Budget Making* is not a compilation of what others have written; on the contrary, it is the product of one who has had long and varied experience in budget matters, and who throughout his first-hand contact with practical problems of public finance has had his eyes open and his ear to the ground.

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As the sub-title indicates, emphasis is placed very largely on state budgets. However, as the budgetary problems of states differ but slightly from those of municipalities and other governments, and as the treatment of the problems and mechanics of budget making is so full and broad-gauged, the book is really a guide to budget making for governments of all sizes and types.

Budget Making is addressed more particularly to legislators, public officials, and students of government; the plain, every-day citizen will find it none the less highly informative and thought-provoking. Those who glibly talk of budgets and budget systems, or who look upon them as panaceas for the ills of the day, ought to be required to read this book, or have it read to them. Perhaps they would find that budgets are not produced by pious wishes alone, but that each budget is "only a link in the ever lengthening chain of the government's financial experience," and that "effective budget-making procedure constitutes a complete cycle of operations" and continues throughout the year.

One is at a loss to decide which of the twelve chapters of the book is the most significant, for each makes important contributions to the well-rounded picture. The subject is dealt with in a broad, inclusive manner. Sound fiscal policies and correct accounting practices are emphasized; the technique, mechanics, and procedure of budget making are explained in considerable detail; each essential step from beginning to end is taken up in order, discussed, and evaluated. In addition, model forms are shown and explained, and a great deal of information regarding existing budget systems is included.

Mr. Buck's book is intended to be a practical manual of budget making, and such it is. It is so practical and so helpful that it seems destined to exert from now on a most powerful and beneficent influence on budget procedure. This volume has set a high standard for the series of handbooks, issued by the National Institute of Public Administration, of which it is the first to appear.

ROBERT J. PATTERSON.

Bureau of Municipal Research of Philadelphia.

Principles of Government Accounting and Reporting. By FRANCIS OAKEY. C.P.A. (New York: D. Appleton and Company. 1921. Pp. xxvii, 563.)

This volume was published by the Institute of Government Research, Washington, D.C., as one of the series of books on *Principles of Adminis-*

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tration. The institute, under the able leadership of its director, W. F. Willoughby, has taken up the task of making a careful study of "each of the more important branches of public administration . . . . with a view to making known those principles and practices the employment of which . . . . will lead to efficiency and economy in the conduct of public affairs."

Dr. Willoughby rightly places accounting and reporting among the most important technical problems of public administration. To accomplish the desired end of promoting more efficient and economical administration through accounting and reporting, it was realized that the work must reach the government, administrators and legislators, and the intelligent public. For the production of such a work, at the same time both scientific and practical, Mr. Francis Oakey is unusually well prepared through his wide experience with the accounting problems in national, state and municipal government.

Accounting and reporting are merged by the author into a single science. Accounting he defines as "the science of producing promptly and presenting clearly the facts relating to financial condition and operations that are required as a basis of management." "The prime function of accounting," he maintains "is the clear and prompt presentation of all the facts that are essential to good judgment and effective action." Accordingly accounting is treated as a means of reporting or furnishing to the interested governmental official information essential for effective administration.

The kind of information needed by the various classes of officials—operating executives, controlling executives, legislative bodies—and the public are presented in the introductory chapter. The definition, significance, application and operation of "funds" and "funding" in financial administration furnish the subject-matter for four chapters. Among the other important subjects discussed are the balance sheet, receipts, expenditures, fixed property, stores, funded debt, sinking funds, current assets, current liabilities and private funds. The book closes with a brief chapter on "The Budget as a Report."

Each of the subjects presented is viewed in its relation to the entire subject of financial administration. In fact the book might be termed a handbook on financial administration, since the author presents rules for correct financial procedure in fields distinctly outside of accounting and reporting taken in the narrower sense.

Comparatively little attention is paid by the author to the form and content of annual financial reports intended to interest and inform the

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public. A satisfactory discussion of that subject is yet to be written. The list of contents (pp. xiii–xxi), furnishes a valuable topical analysis of the book. The index however is far from adequate.

The author has produced the best work so far written on the subject, and has made a valuable contribution in the fields of public administration and public finance.

ORREN C. HORMELL.

Bowdoin College.

Principles of Public Personnel Administration. By ARTHUR W. PROCTER. (New York: D. Appleton and Company. 1921. Pp. xi, 244.)

The Federal Service. A Study of the System of Personnel Administration of the United States Government. By LEWIS MAYERS. (New York: D. Appleton and Company. 1922. Pp. xvi, 607.)

During the last decade some twenty cities, six states and the national government have analyzed their problems of public employment in an effort to establish conditions that will attract and retain a competent personnel in the civil service. This series of surveys, identified by salary standardization or reclassification reports, has provided an experience which has not been presented heretofore in book form. It is Mr. Procter's opportunity not only to record this experience, but also to consolidate the gains and make them available for general information.

His volume, published for the Institute of Government Research in the series on *Principles of Administration*, applies equally to municipal, state and the national governments. Beginning with a brief summary of conditions leading to the Civil Service Reform Act of 1883, it emphasizes the need for supplementing this legislation by a more positive program relating to adequate salaries, employment standards, scientific recruiting methods, training, advancement and promotion, rating and control of individual efficiency, employees representation and superannuation. Comments upon these factors constitute the contents. One chapter in particular relates to the legal status and functions of a civil service commission, and another, the author's most constructive contribution, to methods of conducting a standardization inquiry. Appendices include a list of cities and states having civil service commissions, the model civil service law for state governments drafted by the National Civil Service Reform League, and a brief bibliography.

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Emphasis is placed upon factors in the technique of personnel management. Except for comments upon the functions of a civil service commission, there is very little consideration of the equally important problem of allocating responsibility for administering these factors. This latter is a difficult task which is perplexing our governments in their attempt to distribute the control over personnel matters among the department heads, the budget bureau, the civil service commission, and other staff agencies, such for instance as the bureau of efficiency in the national government. Mr. Procter's wide experience in budget and civil service surveys also qualifies him to present this phase of the personnel problem. It would have been interesting if he could have paid more attention to it.

The book will be instructive to all students of public administration but particularly to government officials and civic agencies desiring an authoritative record of methods and tendencies in the management of our civil service.

While portraying in great detail the subjects of appointment, promotion, tenure, classification of positions, salaries and employees' organizations in the federal government, Mr. Mayers has demonstrated the magnitude of the task confronting any person who has the courage to analyze these factors in our civil service. But this volume—the most recent in the series of *Studies in Administration* of the Institute for Government Research—is more than a demonstration of magnitude. It is the best presentation of the problem of entrance, promotion and traditions of the service that has been published. Mr. Mayers has made a contribution which could only be made after painstaking and penetrating research by a person having unusual experience and clear insight into governmental operations.

The volume incidentally deals with the history of the law of selection and tenure. But fortunately there is a departure from the treatises on nepotism, favoritism, and political influence which have so characterized civil service literature that uninformed citizens are apt to identify the civil service problem with "spoils" and then dismiss the subject without further consideration. Mr. Mayers does devote considerable space to the elimination of politics from the civil service. This he must do, for as he writes "The political problem is purely a negative one . . . . . Not until this problem has been substantially solved can the positive and technical problems of personnel administration, or indeed of administration generally, be successfully attacked."

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There are two parts. The first considers the elimination, whenever desirable, of political influence from the civil service and discusses in this connection the source of the appointing power, the relation of Congress and the President in respect to appointments, the laws of 1871 and 1883, with considerable attention to the extension and operation of the present classified service and "formal systems of selection." The second part deals with the technical problems of personnel administration, assuming that the undesirable political influence has been eliminated from the service. In this part the subjects are promotion versus recruitment, reassignment and promotion, recruiting methods, the maintenance of efficiency, working conditions, organization for administration, and employees' organizations.

Readers will be impressed with the intimate knowledge that the author has of the subjects and particularly with the first-hand information of conditions in the executive departments. Judgments and conclusions are tempered by this intimacy. Some of the references to the English service need revision owing to the recent changes in English practices, but in a world of rapid change it would be impossible to record matter and expect it to remain, even over night, without noting the necessity for alterations in the morning.

MORRIS B. LAMBIE.

University of Minnesota.

BRIEFER NOTICES

Professor O. D. Skelton's *Life and Letters of Sir Wilfrid Laurier* (2 vols., Oxford University Press) is one of the most interesting and significant among political biographies. The public career of this statesman coincided with important developments in the British colonial system and Laurier's relation to these developments was in most cases intimate. As a young lawyer in a country town Sir Wilfrid entered politics fifty years ago. His progress was not rapid at the outset, but in 1887 he became leader of the Liberal party. Nine years later he became prime minister, a post which he held until overthrown on the reciprocity issue in 1911. His biography might well be termed "A Half Century of Canadian Politics," for there were no events in this field and epoch which failed to command his interest and activity. Professor Skelton has made the most of his theme, dealing with it in a broad and scholarly way. He has not overloaded his volumes with extracts from speeches, letters and state papers. The narration is clear and interesting, never apologetic in tone, not always strictly

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impartial, but disclosing an endeavor to be fair in all things. Some men are fortunate in their careers but unfortunate in their biographers. Sir Wilfrid Laurier was fortunate in both. He took some risk in selecting, as his literary executor, a scholar who was neither of his own race or faith; but the outcome has abundantly justified the wisdom of his choice.

My Memories of Eighty Years, by Chauncey M. Depew (Scribner's, pp. 417) is an entertaining collection of reminiscences and anecdotes about the great and the near-great told in a rambling and conversational manner by one who has had a long and successful career in business and politics. Among other things Mr. Depew has written intimate accounts of all the presidents of the United States from Lincoln down to Roosevelt, has told about important national campaigns and his experiences in the United States Senate; and has done considerable philosophizing about government and politics along with the lighter parts of the work. In speaking of the "widening chasm between the Executive and the Congress" he writes that "the Cabinet should have seats on the floor of the Houses, and authority to answer questions and participate in debates. Unless our system was radically changed, we could not adopt the English plan of selecting the members of the Cabinet entirely from the Senate and the House. But we could have an administration always in close touch with the Congress if the Cabinet members were in attendance when matters affecting their several departments were under discussion and action."

Ten years at the Court of St. James', by Baron von Eckardstein (translated and edited by Professor George Young, E. P. Dutton and Company, pp. 255), is full of diplomatic revelations by one who admired Bismarck, was charmed by King Edward and disapproved of Kaiser Wilhelm and all his doings. For the general reader the diplomatic snapshots of important personages and the many personal stories are good gossip and have all the charm thereof; while for the student of political science these rather unique reminiscences throw a new light on pre-war politics and diplomacy. Of special interest is the account of those fateful years when Lord Salisbury, Mr. Chamberlain, the Duke of Devonshire and others were trying to bring about an Anglo-German alliance that would perhaps have prevented the recent war. In von Eckardstein's opinion, failure was due not to any fault of these British statesmen but, in the words of Professor Young, the translator, "to the waywardness of the Kaiser, the weakness of his Chancellors, and the tortuosities of Holstein."

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The Memoirs of the Crown Prince of Germany (Scribner's, pp. 374) are a mixture of interesting observations, lamentations and excuses. The lamentations are dull, the excuses are more interesting and many of them are convincing. Especially enlightening are the accounts of his militaristic relations with his father; emphasis is placed upon his efforts to refute the legends which have placed upon him the chief responsibility for the débâcle at Verdun. Important events and situations are graphically described, and there are vivid portrayals of such famous personages as Bismarck, King Edward, Czar Nicholas, Bethmann-Hollweg, von Hindenburg and others. The Crown Prince attributes the collapse of the German army largely to the dissensions at home and to the breakdown in the morale of the German people. Assuming that the Crown Prince wrote all of the memoirs himself, a point on which there has been considerable discussion, he is more intelligent than we have given him credit for being. It is unfortunate that the publishers do not reveal the name of the translator.

Our Navy at War, by Josephus Daniels, former secretary of the navy (George H. Doran Company, pp. 390) is a vivid and interesting account of the efforts of the American Navy and the Marine Corps in the World War. The author has drawn his material partly from official records, partly from his own wide experience as the civilian head of the naval forces and partly from the experiences narrated by naval officers. The result is the most complete and readable popular account yet written concerning the service rendered by the navy in the great crusade. Of special interest are the chapters which tell how the navy was mobilized upon almost a moment's notice in the spring of 1917, how the marines helped stop the drive on Paris, the work of the naval overseas transportation service, the development of the naval reserve, and the little known activities of the navy after the close of hostilities in the enforcement of the terms of the armistice and relief work in such places as the Adriatic, Constantinople and Russia, and finally the hazardous task of sweeping up the mines planted in the North Sea.

The Harvard University Press has published a *Manual of Collections of Treaties and of Collections Relating to Treaties* (pp. xlvii, 685) by Denys P. Myers, which should prove invaluable to students of international law. As indicated by the title the aim is to present for ready reference a complete bibliography of all collections of treaties and works relating to treaties of every state down to the outbreak of the

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World War. In order to make the volume "internationally serviceable" the preface, table of contents, index and certain other parts are in both English and French. The material is presented in four sections; the first containing references to general collections of treaties, the second containing references to collections by states, the third collections by subject matter, and the fourth references to treaties on international administration. In order to afford the reader a general view of the subject, notes on the history of the publication of treaties have been brought together in narrative form in the appendix.

A small volume on *Secret Diplomacy: How Far Can It Be Eliminated?*, by Paul S. Reinsch (Harcourt, Brace and Company, pp. v, 231), contains much illustrative material on the subject with which it deals, much ripe wisdom, much practical counsel. After a review of diplomatic practice in the last two centuries, with special attention to the diplomacy of 1900–1920, certain general conclusions are drawn for reconstructive work in the future. The author steers a true course between the insanity of the red critic of orthodox diplomacy and the complacency of the professional diplomat. If rather general and inconclusive in tone, that is because the student can, in this matter, only indicate sound principles and hope that those in power—the people and their official representatives—will act upon them.

Raúl de Cárdenas in his book *La Política de los Estados Unidos en el Continente Americano* (pp. 281), published by the Sociedad Editorial Cuba Contemporánea, has made a careful study of the growth of American territory and influence. The book is divided into three parts, first a history of American territorial expansion, second a discussion of the development and significance of the Monroe Doctrine, and last a study of American "Preponderance in the Caribbean." In this last section the author criticizes severely the policy of the United States in Haiti and San Domingo, but he calls these exceptions and does not believe that the majority of Americans know what is going on. Himself a Cuban, Sr. Cárdenas is grateful for all that the United States has done for his country and is full of praise for its altruistic attitude.

Japan's Pacific Policy, by K. K. Kawakami (E. P. Dutton and Company, pp. xiv, 380), is primarily an account of the part taken by Japan at the Washington Conference but it also contains a careful analysis of the problems of that country due to her geographical situa-

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tion and political necessities. The authors' conclusion is that Japan although not "the sole or even chief, sinner among the Powers . . . . has gone home from the Washington Conference on probation," and that the endurance of the good impression made upon the public opinion of the world will depend upon her future actions. There is an appendix of some one hundred pages presenting practically all the important documents on Japan, China and the Pacific submitted to, or adopted by, the Washington Conference.

Japanese-American Relations, by Iichiro Tokutomi (translated by Sukeshige Yanagiwara, Macmillan Company, pp. 207), is the attempt of one of Japan's leading publicists to give an unbiased account of Japanese-American relations. It is not for an American to judge whether or not he has succeeded. Another recent book dealing with a similar subject is *The Real Japanese Question*, by K. K. Kawakami (Macmillan Company, pp. xiii, 269). In this book the author confines himself almost entirely to a discussion of the anti-Japanese policy of the Pacific states and presents statistics and arguments to refute the ideas of those who maintain that there is a "Japanese menace."

The veteran journalist, Charles Edward Russell, has written an entertaining and instructive book entitled *The Outlook for the Philippines* (Century Company, pp. 411). The early history of the islands and their occupation by the United States are traced and there are a number of chapters devoted to the peoples, their resources and to the industrial, educational, religious, social and political phases of life there. The author attempts to present both sides of the independence question, but in the end comes out rather emphatically in favor of immediate independence. The only doubt in his mind is whether the Filipino leaders have sufficiently considered the economic consequences of cutting adrift from the United States. There is a good index and an appendix containing statistical and other data.

Asia at the Cross Roads, by F. Alexander Powell (Century Company, pp. 369), is an excellent book for one who wishes to get an elementary idea of social and political conditions in the Far East. The problems of China and Japan are discussed clearly and impartially, but when it comes to the Philippines, the author turns advocate and pleads for the non-independence of the islands. Although royally entertained by Governor Harrison and given every opportunity to see the suitability of independence, his extensive and intensive visit and observations lead Mr.Powell to the opposite conclusion from that of Mr. Russell.

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Leo Pasvolsky, in *Russia in the Far East* (Macmillan Company, pp. ix, 181), traces and condemns the aggressively imperialistic policy of both the Czarist and the Bolshevist régimes in the Orient. His account of recent events in Mongolia is interesting, and his statements and conclusions are supported by appendices containing translations of official documents. The narrative leads up to the Washington Conference, and an appeal is made for the United States to assume the "moral trusteeship" of true Russian national interests.

Messrs. E. P. Dutton and Company have published a book entitled *Lenin* by M. A. Landau-Aldanov (translated from the French; pp. ix, 241). The author, "a Socialist after Jaures," studies in this small volume two things: a very strong and very curious personality and the idea of a Communist revolution in social philosophy. His verdict on Lenin's personality is absolutely opposed to those who think the Bolshevik leader capable of learning from experience the error of his Communist ways. He finds three initial sources for Lenin's ideas: Marx, Bakunin, and Sorel.

Serbia and Europe, 1914–1920, compiled by Dr. L. Marcovitch (Macmillan Company, pp. xv, 355), is a collection of articles published in the journal *La Serbie* between 1916 and 1919. A number of writers have collaborated in furnishing material for this volume, but most of the articles have been written by Dr. Marcovitch. Starting with the assumption that Europe has not understood Serbian affairs, the book is intended to set forth the policy of that country during the war as conceived by Serbian publicists and politicians. Having revealed the purpose and aspirations of the country both before and after 1914, which are described as the fixed determination to resist German aims at all costs, chapters are devoted to the struggle with Austria-Hungary; Serbo-Bulgarian relations, which are described with feelings of decided animosity; relations with Italy, Russia, Roumania and Greece; and most important of all the realization of national ideals through the formation of the independent kingdom of the Serbs, Croats and Slovenes.

Europe of Today, by J. F. Unstead (Moffat, Yard and Company, pp. viii, 248), is an explanation of the physical geography of each of the larger sections of Europe together with a brief survey of the social, economic and political problems of each. Especial attention is given to central and eastern Europe where the World War has caused the

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greatest changes. The maps and diagrams, which are few in number, are intended not to supersede but to supplement an atlas which the author assumes will be used in connection with the book.

The first volume of *A Short History of the British Commonwealth*, by Ramsay Muir (World Book Company, pp. 824), covers an immense amount of ground. It begins with the earliest peoples of the British Isles and stops just before the American Revolution. It gives a brief account of English history, political and constitutional, and does not neglect the social and economic aspects of the development of the country. The histories of Ireland, Scotland and Wales are sketched and pictures of their social life at different stages in their growth are quite fully given. Nor are the colonies omitted. America, the West Indies and India are all given ample treatment. The book is exceedingly readable, one reason being that the author likes to write about the individuals of history and does not confine himself to laws and conditions of the people as a whole.

British History in the Nineteenth Century (1782–1901), by George Macaulay Trevelyan (Longmans, Green and Company, pp. 445), is a brilliant study of the period. The first chapters give a series of vivid pictures of the state of society in England before the Industrial Revolution. From there on the author carries his theme of continuous growth resulting from economic, social and political changes. But it would not be true to Trevelyan's style without portraits of the men who led these changes, and these he has given us in abundance.

Democracy and the British Empire, by F. J. C. Hearnshaw (Macmillan Company, pp. xi, 205), contains several lectures delivered recently by the author at the Universities of Sheffield, Edinburgh and London. In these lectures Professor Hearnshaw traces briefly the development of democracy, first in the British Isles and secondly in the self-governing dominions, and explains why there is nothing incompatible between representative government and British imperialism. The concluding section of the book deals with the menace of "direct action" both to democracy and empire. "Labour—genuine labour," says the author, "is destined to rule both Britain and the dominions. But the only manner in which it can rule them is the old, well-tried, slowly developed method of constitutional government."

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Two of the latest booklets in the *World of Today Series*, edited by Victor Gollancz (Oxford University Press), are *Whitehall* (pp. 78) by C. Delisle Burns, and *The Exchequer* (pp. 71) by R. G. Hawtrey. The former describes the offices of the central government in England, the functions performed by the civil service and the position of the service in the life of the English people; while the latter book deals with the parliamentary and administrative side of the English financial system.

France and England: Their Relations in the Middle Ages and Now, by T. F. Tout, University of Manchester, Historical Series, No. XL, pp. 168), would be a splendid book if the "*and Now*" had been left out of the title. The relations between the two countries in the Middle Ages are discussed in a scholarly and thoroughly interesting manner, and the author has brought out many points of contact that have not always been appreciated. But except for a few allusions here and there the author does not get as far as the Renaissance, much less to the present day. The title rather than the subject matter should be changed.

Students of history are greatly indebted to Professor J. B. Botsford for editing the manuscript of his father, the late G. W. Botsford, so as to make possible the publication of *Hellenic History* which has just been brought out by the Macmillan Company (pp. 520). The work is planned primarily as a text for college courses, and its purpose is to present in brief scope the evolution of Greek civilization with particular emphasis upon those phases of Greek life which have influenced to a marked degree the civilization of today. Those interested in political science will find much valuable material in such chapters as "The Evolution of the City State," "Imperialism," "Athenian Democracy," "Society and Public Works," "Social Aspects of the State" and "The Organization and Administration of the Hellenistic States."

The Legacy of Greece, edited by R. W. Livingstone (Oxford University Press, pp. xii, 424), aims to give some idea of what the world owes to Greece and what it can still learn from her. Of interest to students of politics are the sections on history and political thought by Arnold Toynbee and A. E. Zimmern, respectively. Professor Zimmern is of the opinion that the most enduring thought which Greek political thinkers leave with us is that "public affairs . . . . . so far from being a tiresome preoccupation or a 'dirty business' are one of the

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great permanent interests of the race: if they were not too trivial or too debasing for great artists like Thucydides and Plato, we need not fear lest they be too trivial or debasing for ourselves."

The Origin of Tyranny (Cambridge University Press, pp. 374), by P. N. Ure, is an extremely interesting and well-written discussion of the earlier Greek tyrants, including also Rome, Lydia and the Saïte dynasty of Egypt, with especially careful utilization of the archaeological evidence. The author shows that the source of the tyrant's power in the earlier period was primarily financial and commercial; this is true for the Peisistratids also. They do not *per se* represent a democratic reaction against the nobility. The later conception of the tyrants in Plato and Aristotle is anachronistic, being derived primarily from the Syracusan despots of their day.

Bruce Smith, for nineteen years a member of the Australian House of Representatives, has written a sane and searching account of the purposes and possibilities of popular government in a volume entitled *The Truisms of Statecraft* (Longmans, Green and Company, pp. xiv, 255). Great stress is laid upon the necessity of drilling into the usually provincial legislator's mind an understanding of human affairs and the history of various peoples, and an attempt is made to lay down a body of general principles as a guide to practical legislators concerning the wisdom or unwisdom of this or that particular kind of legislation. One does not have to read very far to discover that Mr. Smith's political creed is one opposed to the present socialistic tendencies of his own and other governments.

Recent publications by the University of Toronto Press include: *Canadian Constitutional Studies*, (pp. 163), the Marfleet lectures delivered at the university in 1921, by Sir Robert Laird Borden, former prime minister of Canada, presenting a general sketch of Canadian constitutional development from 1863 to the present time; and *Idealism in National Character* (pp. 216), some half dozen lectures delivered by Sir Robert Falconer, president of the university, which give interesting discussions of the importance of education in the development of of national character, Canadian universities and the war, and the evolution of British imperial policy.

An address delivered by Chief Justice William Howard Taft before the students at the University of Rochester has been printed in a small

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booklet entitled *Liberty Under Law* (Yale University Press, pp. 51). With a keenness of analysis and clearness of style so characteristic of all his writings, Justice Taft sets forth in brief space his interpretation of the principles of American constitutional government and warns against indifference to the enforcement of law.

Professor Stephen Leacock has revised and enlarged his *Elements of Political Science* (Houghton Mifflin Company, pp. xiii, 415) which appeared first in 1906. Facts in this new edition are brought down to 1921, and the effects of the World War, the reconstruction of Europe and the League of Nations are set forth. Various matters such as proportional representation, the initiative and referendum, and direct nomination which have developed rapidly since the previous edition are enlarged upon and additional references to recent books and articles have been included at the end of each chapter.

Triumphant Plutocracy, by R. F. Pettigrew, formerly United States senator from South Dakota (Academy Press, pp. 145), is a tirade against the generally accepted order of things which has for its thesis the idea that "the whole structure of our government from the Constitution onward" has "been framed by business men to further business ends," that the laws have been "passed by the legislatures and interpreted by the courts with this end in view," and that the execution of these laws has "been placed in the hands of executives known to be safe and that these things were more true of the national than they were of the local and state political machinery." One of the radical remedies proposed by the author is to abolish the inferior United States courts, which would leave the Supreme Court without the power to declare laws of Congress unconstitutional.

Revolution from 1789 to 1906 is a collection of documents selected and edited with notes and introductions by R. W. Postgate published by Houghton Mifflin Company (pp. 400). Mr. Postgate believes the age-long revolution is leading to socialism (p. 13), and selects his documents and writes his notes and introductions from this point of view. It is somewhat astonishing to note that only 50 of his 400 pages, those on the Russian revolution of 1905, deal with the period since the Parisian Commune. Even such important documents in the history of the European Socialist movement as the Gotha and Erfurt programs of the German party are not included. Most of the work is devoted

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to the French Revolution of 1789, the Revolutionary British Working Class, 1832–1854, to the Revolutions of 1848, the Commune and the Russian Revolution. Throughout, Mr. Postgate is particularly concerned with the communist and socialist phases of the revolutions and with the separation of "the proletarian" from "the bourgeois.". He gives 1848 as the end of bourgeois revolution on the Continent and 1832 in England (p. viii). Although the book is far from a complete collection of the leading documents of European socialism it will prove convenient and useful to all students of the subject.

In *The Revolt against Civilization* (Scribner's, pp. 274), Lothrop Stoddard has given an account of certain present day conditions which is even more alarming than his *Rising Tide of Color* and *the New World of Islam*. In these earlier books, Mr. Stoddard saw much to disturb him in the questions of the colored races and in the new forces that were stirring the Mohammedan world. In *The Revolt against Civilization* it is the so-called "under-man" and the menace of revolution which strike at the roots of organized society. While the author has undoubtedly painted a scene somewhat darker than it actually is, the reader will find much food for thought in this book.

The Extension Division of the University of North Carolina has issued a useful bulletin on *The League of Nations* (vol. I. no. 8, pp. 67) containing a brief of arguments for and against the entrance of the United States into the League, a text of the covenant, a bibliography and a number of carefully selected affirmative and negative references. This Division has also published a bulletin on *Farm Tenancy and its Relation to the Church*, by L. G. Wilson (Vol. I, no. 11, pp. 28).

In his Dartmouth Alumni Lectures, *Towards the Great Peace* (Marshall Jones Company, pp. vi, 264), Mr. Ralph Adams Cram develops the idea that at present the world is in a period of declining civilization, and suggests means by which the rise of a greater civilization may be hastened.

Washington and the Riddle of Peace, by H. G. Wells (Macmillan Company, pp. 312), tells us how the conference at Washington made Mr. Wells feel and what ideas that important assembly suggested to his fertile brain.

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Our Eleven Billion Dollars by Robert Mountsier (Thomas Seltzer, pp. 149) is a concise and non-technical summary of the facts and figures concerning Europe's debt to the United States. The author is not in favor of the cancellation of this debt except a small part which is owed by such countries as Armenia, Czecho-Slovakia, Poland, etc. His chief proposal is for a world economic conference to be held in Washington which could by means of discussion and study at least initiate "the program of economic reorganization that will eventually win this post-war by providing a hopeful basis for immediate action and the adjustment of more equitable relations between consumer and producer, labor and capital, and among nations, large and small, old and new."

The Christopher Publishing House has recently published a book entitled *The American Spirit in the Writings of Americans of Foreign Birth*, compiled and edited by Robert E. Stauffer (pp. 185). This volume contains selections setting forth the essence of Americanism as found in the writings of certain eminent Americans of foreign birth or extraction such as Francis Lieber, Carl Schurz, Jacob Riis, Edward Bok, Edwin L. Godkin, Oscar Straus, Otto Kahn, and others of lesser importance. Another book published by the same house is *Graded Lessons in English for Italians* by Angelo Di Domenica (pp. xiv, 282). Both books should be helpful to those engaged in Americanization work.

Why Europe Leaves Home, by Kenneth L. Roberts, the well-known newspaper correspondent (Bobbs-Merrill Company, pp. 356), is a popular account explaining the recent migration of the peoples of Europe, especially why so many immigrants from Central and Southeastern Europe have been moving to America, what this means to the United States, why and how the Russians of the old régime fled to Paris, Warsaw and Constantinople and their struggle for existence, and the return of Constantine to Greece.

The Immigrant Press and its Control (Harper and Brothers, pp. xix, 487), by Robert E. Park, is a systematic and unbiased study of foreign-language newspapers in the United States. The author presents both the grave dangers and the decided merits of the foreign-language press with particular reference to the Americanization movement. He is opposed to any radical proposals for regulation such as those for taxing or penalizing immigrant publications but finds the best lever of control through coöperation and alliance.

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Jerome Dowd, Professor of Sociology at the University of Oklahoma, has set forth his observations and interpretation of American life and institutions in a small volume entitled *Democracy in America* (The Harlow Publishing Company, pp. xiii, 506). The book is made up largely of quotations from various writers such as Bryce, DeTocqueville, Münterberg and Dickens with comments by the author.

Professor Thomas H. Reed, of the University of California, has written an elementary text entitled *Loyal Citizenship* (World Book Company, pp. viii, 333), the purpose of which is to give the pupil first the "necessary minimum of knowledge of the institutions and principles of government and society. . . . and, second, to inculcate the habit of civic-mindedness not merely by example and precept but by practice as well." In order to accomplish the latter purpose there is a list of "civic activities" at the end of each chapter suggesting inquiries and first-hand studies that can be made by the student in his own community.

Among the recent monographs in the *Columbia University Studies in History, Economics and Public Law*, are: the first volume of a political history entitled *William Shirley, Governor of Massachusetts, 1741–1756*, by George Arthur Wood, Assistant Professor of History at Ohio State University (vol. XCII, no. 209, pp. 433); *The Whig Party in Pennsylvania*, by Henry R. Mueller, Professor of History at Muhlenberg College (vol. CI, no. 2, pp. 271); *Japan's Financial Relations with the United States*, by Gyoju Odate (vol. XCVIII, no. 2, pp. 136); *Some French Contemporary Opinions of the Russian Revolution of 1905*, by E. Alzona (vol. C, no. 2, pp. 117); and *The Peaceable Americans of 1860–1861*, a study in public opinion by Mary Scrugham (vol. XCVI, no. 3, pp. 125).

William Parr Capes, secretary of the New York conference of mayors and director of the New York state bureau of municipal information has set forth his observations and conclusions on municipal government in a volume entitled *The Modern City and its Government* (E. P. Dutton and Company, pp. xv, 269). He discusses the essentials of good government, how to make both municipal officials and citizenship efficient, city charters, the federal, commission and commission-manager types of government, the control and management of city school systems, standards of judging the efficiency of government and the future cost

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of municipal government. In making this survey Mr. Capes has not confined himself to any one section of the country nor to any particular class of cities but has given special consideration to a score of towns and cities both east and west and varying in size and complexity of problems from New York City to Wilmette, Illinois, and Alhambra, California. For fifteen of these municipalities there are large-sized charts illustrating the different forms of government which should prove helpful to students of city problems.

The Thomas Y. Crowell Company has published two small books on city government by Charles M. Fassett, now lecturer at the University of Kansas and formerly mayor of Spokane. One of these, entitled a *Handbook of Municipal Government* (pp. 192), presents in simple form the essential facts concerning the development and structure of city government and some of the more important administrative functions of cities. As explained by the author his purpose is not to give an exhaustive treatment of the subject nor to rival the more complete texts which are available, but merely to condense the material into a handy and readable volume without sacrifice of essentials. This aim the author has accomplished. The second book, entitled *Assets of the Ideal City* (pp. 177), deals with the activities and undertakings which are essential to modern life in cities. Although there is little that is new or original in either of these volumes they are of especial interest as the products of a man who has made a success as the mayor of a large city and who has recently turned his efforts in the direction of presenting the results of his experiences and study to a wider public.

The History of Public Poor Relief in Massachusetts, 1620–1920 (Houghton Mifflin Company) by Robert W. Kelso, former commissioner of the department of public welfare in Massachusetts, is an intensive and informing study of the English origins, American beginnings and the development of the system of public charities in that state from the days of the Plymouth Colony to the present time. Considerable attention is given to the evolution of the law of settlement, and to the work of the state department of public welfare, including the so-called Massachusetts system of child-guardianship. Mr. Kelso believes that so far as possible the detailed administration of public poor relief should be left to the local units of government, reserving to the state chiefly the determination of general policies, in other words a plan of centralized policy and decentralized administration.

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The Macmillan Company has published a very practical book on *The Rural Community*, by Llewellyn McGarr (pp. xv, 239). There are useful chapters on the characteristics of rural communities, their contrast with urban districts, the survey and its adaptation to the rural community, and the importance of the country school. This small work should prove a useful guide to those interested in country life improvement.

Among the more important recent elementary texts for use in high schools are *New Era Civics* by John B. Howe (Iroquois Publishing Company, pp. vii, 420); *Problems of American Democracy*, by Henry Reed Burch and S. Howard Patterson (Macmillan Company, pp. x, 601); *Problems in American Democracy*, by Thames R. Williamson (D. C. Heath and Company, pp. xv, 567); *Community Life and Civic Problems*, by Howard C. Hill (Ginn and Company); and *A History of the United States*, by Wilbur Fiske Gordy (Scribner's, pp. xiv, 600). Charles Edgar Finch has written a book entitled *Everyday Civics* (American Book Company, pp. ix, 326), which is designed to meet the needs of students from twelve to fifteen years of age.

John H. Vaughan, Professor of History and Economics at the New Mexico College of Agricultural and Mechanic Arts has published a text book on the *History and Government of New Mexico* (published by author, pp. 373), which is intended for use in the public schools.

The Library of Congress has issued its annual *List of American Doctoral Dissertations Presented in 1920*, prepared by Mary Wilson MacNair (Government Printing Office, pp. 170).

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RECENT PUBLICATIONS OF POLITICAL INTEREST

BOOKS AND PERIODICALS

CLARENCE A. BERDAHL

University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

Books

Black, Henry Campbell. 1922 supplement to income and other federal taxes. Kansas City (Mo.), Vernon Law Book Co.

Daniels, Josephus. Our navy at war. N. Y., Doran.

Diamonon, Victoriano D. The development of self-government in the Philippine Islands. Pp. vii+162. Iowa City, University of Iowa. 1920.

Farrand, Max. The fathers of the constitution: a chronicle of the establishment of the union. (Chronicles of Am. Series, vol. 13.) Pp. xii+246. New Haven, Yale Univ. Press.

Fowler, Charles N. The United States reserve bank. Washington, Hamilton Book Co.

Heaton, Willis E. The procedure and law of surrogates' courts. Fourth ed. 2 vols. Pp. xliv+1108; xxxviii+1099. Albany, Matthew Bender & Co.

Horack, Frank Edward. The government of Iowa. 2nd ed. Pp. xiii+222. N. Y., Scribner's.

Hoskins, J. A., comp. President Washington's diaries, 1791–1799. Summerfield (N. C.), J. A. Hoskins.

Hugins, Roland. Grover Cleveland: a study in political courage. Washington, Anchor-Lee Pub. Co.

Hungerford, Edward. Our railroads tomorrow. N. Y., Century Co.

Irwin, William W. United States circuit courts of appeals cases. Pp. 243. Grand Rapids (Mich.), Wm. W. Irwin.

Johnson, Allen. Jefferson and his colleagues: a chronicle of the Virginia dynasty. (Chronicles of Am. Series, vol. 15.) Pp. ix+343. New Haven, Yale Univ. Press.

Kelso, Robert W. The history of public poor relief in Massachusetts, 1620–1920. Boston, Houghton Mifflin.

Konkle, Burton Alva. George Bryan and the constitution of Pennsylvania. Philadelphia, William J. Campbell.

Lyons, Maurice F. William F. McCombs, the president maker. Cincinnati, Bancroft Pub. Co.

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